THE Fundamental Constitution OF THE English Government.

PROVING

KING *WILLIAM* and QUEEN *MARY* our Lawful and Rightful KING and QUEEN.

In Two Parts.

In the First is shewn,

The ORIGINAL CONTRACT, with its Legal Consequences allowed of in former Ages.

In the Second,

All the Pretences to a Conquest of this Nation by *Will.* 1. are fully examin'd, and refuted.

With a large Account of the Antiquity of the English *Laws*, *Tenures*, *Honours*, and *Courts* for Legislature, and Justice.

And an Explanation of material Entries in *Dooms-day-Book.*

By *W. A.* Author of the first Answer to the late Chief Justice *Herbert* on the *Dispensing Power.*

Errat siquis existimat tutum ibi esse Regem, *ubi nihil à Rege tutum est; securitas securitate mutuâ paciscenda est.* Sen.

London, Printed by *J. D.* for the Author, 1690.

FH
MVSEVM
BRITANNICVM

To the Right Honble

AUBREY DE VERE,

Earl of *Oxford*, Baron of *Bolebec*, *Sandford* and *Badlesmere*; Lieutenant General of their Majesties Forces; Colonel of the Royal Regiment of Horse-Guards; Lord Lieutenant for their Majesties in the County of *Essex*; Knight of the most honourable Order of the Garter; and one of His Majesty's most honourable Privy-Council.

My Lord;

THEY *who observe what License has been given, as well as taken, to blemish the Instruments, under* God, *and our* King, *in the greatest Deliverance, with the most immediate appearance of God in it, perhaps of any next to that of his chosen People of old; would think the Nature of things to be inverted, Triumph to belong to the Conquer'd, and the most desir'd Deliverance to be worse than the deprecated Bondage, or to lose its Nature, because it was the return of* Prayers *and* Tears, *and not purchas'd by Rivers of Blood.*

And after-times, in which your Lordship's Great Name will flourish, taking root downwards, as it has spread upwards to the first Ages, will treat their Memories with Contempt, who would inure the Brand

I have seen an exact Pedegree of the *Earl's* Family from *Syford* a noble *Norman* Go.

Brand o, Diſloyalty *and* Unchriſtian Behaviour *upon your Lordſhip, and the Followers of ſo bright an Example.*

Gothick Extraction, who was eminent under *Rollo*, who, *Anno* 912, obtain'd *Normandy* by Treaty with *Charles* the *Simple*, and marrying his Daughter. This *Syford* made the like bargain with *Arnold* the firſt, Earl of *Flanders*, from which Marriage the Earls of *Flanders*, and the *Veres* Earls of *Guiſnes* in *Flanders*, deſcended. *Alberic*, or *Aubrey de Vere*, or *Ver*, as he ſtands enter'd in *Doms-day Book*, is ſuppos'd to have come into *England* with *W.* 1. 'Tis certain at the time of the great Survey he was a Proprietor in ſeveral Counties, particularly in *Eſſex*; and *Humphrey* the Son of *Alberic* had at that time ſeveral Mannors in *Norfolk* and *Suffolk*. 'Tis probable that this Son of *Alberic* dy'd in his Father's Life-time. I ſhould take the *Comes Albericus*, who is enter'd in *Doomsday Book* in ſeveral Counties as a Proprietor, from before the reputed Conqueſt, to have been *Alberic de Ver*, and the rather, becauſe, otherwiſe he and his Deſcendents from that time are wholly loſt: and beſides, no place in *England* can be found of which any *Alberic*, or *Aubrey* was Earl, till the time of *H.* 2. when *Aubrey* the third of his Name was created Earl of *Oxford*. But before that time the Office of *High Chamberlain* belonged to the Family, and, as appears by Records which I have ſeen in the *Tower*, was annex'd to their *Barony*. But that of *Bolebec* belong'd not to it till about the time of King *John*, when Earl *Robert* married the eldeſt Daughter of the Lord of *Bolebec*; the *Barony* of *Sandford* came by another Marriage about the time of *H.* 3. the *Barony* of *Badleſmere* came not till the time of *E.* 3. with the eldeſt Siſter and Co-heir of *Bartholomew* Lord *Badleſmere*.

Vid. Pref.

Nor was your Anceſtor Earl Aubrey *more eminent in the time of* W. 2. *for his Skill in the unmix'd Engliſh Laws, than your Lordſhip is, and will be to Poſterity, for your generous Defence of them.*

Selden Diſſert. ad Flet. f. 519. ſpeaking of the time of *Will.* 2. *ſub idem tempus, &c. eminentiſſimus erat, priſtini planè commatis juris ſine ullâ Cæſarei intermixtione peritus, atq; exercitatiſſimus apud nos Albericus de Ver.*

Certain it is how much ſoever ſome pretend to paſſive Valour, they cannot bear the Reproach of ſuch extraordinary Vertue, and are forced to ſhut their weak Eyes at that ſhining Bravery, with which your Lordſhip ſtrugled, with the Flatteries, and Threats of Fortune, and of Power: Becoming, in the Language of the Heathen Philoſopher, "*a Spectacle moſt "pleaſing to the Gods: the Effects of which Pleaſure your Lordſhip has felt, in the admir'd Tranquillity of your own Mind, and in the Glory permitted you, of being ſignally acceſſary towards the preſent Happineſs of your Country; not only by your reſolute Undertaking, but even by your Sufferings.*

I muſt own the Sufferings of others to have contributed to it by accident, as thoſe things may well be ſaid to be, which happen contrary to the intention of the Agent, and nature of the Action.

But the Nation was glad to find their private Reſentments, and ſelf-Defence, *to carry them along with the* Publick Intereſt, *which ſome of them had ſacrificed to low Ends, or ſtupidly neglected; being as unconcern'd at publick Calamities, as if their former Exemptions, which they ſeem'd to aim at, had made them of another diſtinct Community.*

Such as theſe deſervedly loſt the Credit of their ſhare in this Revolution, *not only as they had drawn their Sufferings upon themſelves, and others, by tempting thoſe whom they flattered to make Experiment of the force of their Doctrine; but as their ſubſequent Carriage has demonſtrated, upon what narrow Principles they engag'd, not in the Cauſe of their Country, but their Own. Their lowneſs of Spirit makes them reſemble thoſe fawning Creatures, whom the leaſt Gentleneſs raiſes to Familiarity; but notwithſtanding the Advantages which they enjoy under this Government, 'tis not to be preſum'd that they are given them otherwiſe, than to reclaim and wean them from Notions, as deſtructive, as they are uſeleſs, to this equal Adminiſtration.*

They who now pretend to merit, by tranſplanting the Doctrine of the Bow-ſtring into the Service of this Government, would do well to conſider, whether in the late Reign it really profited any but themſelves; and whether they kept to it any longer, than while they found their account in it.

As it is our Happineſs to have a King born, and acting for the Good of Mankind, it is not to be fear'd

that he ſhould cheriſh what is contrary to their common Senſe, and Intereſt; or that he will countenance Reflections upon thoſe noble Patriots, *who ventur'd every thing dear to them, in the ſame Cauſe with himſelf, while Succeſs was doubtful; and whoſe Reputations, next to his own, facilitated that* Revolution, *for which late Poſterity ſhall praiſe thoſe of this Generation.*

One would think that ſuch a Cauſe ſhould not ſtand in need of Advocates, or they of Patrons: yet when Men High in Titles, *and Pretences to the Service of* Crowns, *range themſelves on the other ſide, and Reflections fly about, and muſt fall ſome where; 'tis requiſite for Men of my Mediocrity, to be cloth'd with the Priviledges of them for whom they plead.*

Under this Protection I may affirm, that while your Lordſhip would have the Throne eſtabliſh'd in Righteouſneſs, *and the* Crown *not only to be eaſy to them that wear it, but amiable to all; Others, out of folly, or deſign, would remove the very Foundation of this, and all regular Governments, hanging them by Geometry upon meer Air; and render Kings, like Indian Gods, to be worſhipped only for their Power to deſtroy, not for the Beneficence of their Natures: which eximious quality in their Majeſties, and in your Lordſhip, abſolutely diſpoſes of,*

So *Seneca* repreſents the *Epicureans* juſtifying the Worſhip of a God. *Deus colitur propter Majeſtatem eximiam, ſingularemq; naturam.* Sen. *de Beneficiis*, lib. 4.

My Lord,

Your Lordſhip's moſt obliged and devoted humble Servant,

W. Atwood.

PREFACE.

THE following Collections, in which I may ſay I have taken ſome Pains, are but an Enlargement upon what I publiſh'd, immediately after the Acceſſion of their Majeſties King *William* and Queen *Mary*, to the Throne of this Kingdom.

I muſt needs ſay I was glad to find, that the Effect of thoſe Studies, which had drawn upon me the weight of an Arbitrary Government, might at leaſt entitle me to the Protection of a Government, which roſe, like the *Phenix*, from the Aſhes of the other; and was founded in ſuch a Conſent as gives Eſtabliſhment to our Laws.

Some may think I carry the Point too far, and prove more than is fitting; they at leaſt for whoſe Conviction ſo much was needful, that they may gain ſtrength to their Party, will repreſent all that oppoſe their Extream as embark'd in the other. And as they were juſtly become odious to all People who had any love for the *Engliſh Liberties*, they will be ſure to run down others as *Common-wealths Men*, not fit to live and breath in a *Monarchy*.

The Doctrine of Non-reſiſtance, or Paſſive Obedience, no way concern'd in the Controverſy, &c. By a Lay-Gentleman.

But to give the Objection its full weight, I ſhall conſider it as it has been managed by a *Lay-Gentleman*, who contends that the Doctrine of the *Bowſtring* was juſt to the *late King*, and would be ſerviceable to *this*; but that the contrary is dangerous to all *Crowned Heads*.

And while I vindicate them who expoſe the modern Notion of *Paſſive Obedience*, I will ſhew that they who may be preſumed beſt to underſtand their own Doctrine, in effect condemn him for a *Renegado*.

This *Lay-Gentleman* abſurdly labours to prove, That they who would not aſſiſt their *Prince*, to maintain that Power which they had beyond meaſure advanced, and were both in Principle and Practice, againſt contributing towards our

preſent happy Settlement, are, for thoſe very Reaſons, the only Perſons fit to be truſted under it.

The greater his Abilities are, and the larger his fore-ſight of Conſequences, the more is he confounded in the Defence of thoſe of our *Clergy*, who have made the greateſt Noiſe for that ſpurious *Non-reſiſting Doctrine*, which he, and they, would impoſe upon our *Church* as its genuine Senſe.

While he, like a true Son of the Church, takes the Rules of his Obedience, and of judging in Civil Affairs, not from the Laws and Legiſlative Power, but from the Biſhops; upon which account alone, he will have the Truth of our King's Declaration, when he was Prince, not to be queſtioned, becauſe, forſooth, *all the ſame things in a manner are complain'd of in the Biſhop's Propoſals.*

The Doctrine of Non-reſiſtance, &c. p. 5.

And thus, if Matters of Fact, or Points of Law, are adopted by the *Clergy*, 'tis not for the profane Laity to enter upon this hallowed Ground, without their Licenſe; and for them to take it from the Church, is ſuch a ſort of Sacriledg, as Dr. *Heylin*, and others, charge upon our *Reformers*, for alienating and clearing the Nurſeries of Superſtition.

Vid. *Hiſt. of Paſſive Obedience*, p. 97. *ſpeaking of* Dr. Hicks *his* Jovian, *that elaborate Commentary on the Doct. of Paſſive Obedience.*

Tho this *Lay-Gentleman* had not explain'd what he means by the *Non-reſiſting Doctrine*, any Man who has read thoſe Books which are ſtill vouch'd as the Standards for it, might eaſily underſtand, that that which they who wiſh well to the preſent Government would have *extirpated* out of the World, and he would keep up, as having *ſuch Characters of Divinity* as *deſerve Reſpect* from us all, as we *are Chriſtians*, is,

P. 96. Dr. Sherlock's *Book of Non-reſiſtance is ſo ſtrong, and his Arguments from Scripture ſo cogent*, &c. *The Doctrine*, &c. Pag. 2, 38.

The not reſiſting the *King*, or any *commiſſioned by him*, but being wholly paſſive, when our Conſtitution and Laws are notoriouſly violated, and we are *perſecuted* againſt Law.

Page 2. Wherein this *Gentleman* would have Obedience to continue when the Law which required and aſcertain'd it, is *ſubverted* in ſuch a manner, as there can be no queſtion of it,

Page 7. this he owns that the late King was guilty of, and that he *would give us no aſſurance we could rely on, to do otherwiſe for the future.* So that we were to expect, that what

Page 8. he calls an *arbitrary, tyrannical, exorbitant Perſecution, would*, if not prevented, *have been entail'd on our Poſterity.*

And the truth of it is generally, to avoid Suſpicion, he ſufficiently loads the late *King*; yet it is not without reaſon, that the boldeſt Talkers have formerly been ſuſpected to have

have ſecret Indulgence; but in this he is ſomething more politick than the Author of the *Vindication of the Magiſtracy and Government of* England, who would make his Court to this Government by juſtifying the laſt; yet this Gentleman's Policy is no more than needful, when he contends that to excuſe them of the Engliſh Nation, who have been inſtrumental towards *the late Revolution, we muſt ſet up our ſelves againſt the Doctrine of Chriſtianity.* Such a Liberty do ſome Men take, with hopes of Impunity, of branding thoſe Men, whom all Generations to come will praiſe, for ſhaking off that Yoke, which neither they nor their fore-Fathers were able to bear; and muſt have entail'd Curſes on their own Memories, had they ſuffered it to be entail'd on their Poſterity.

The Deſign of the Author of the Magiſtracy and Government vindicated.

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This *zealous Gentleman* need not wonder, or be impatient (except as his Sores are rub'd) at the *bandying of this Non-reſiſting Doctrine to and fro in this diſtracted Kingdom*, till the Broachers of it, who firſt rais'd the *Diſturbance*, if they have not the Grace to repent, at leaſt have the Modeſty not to boaſt of it, and to ſtile themſelves the only good Subjects, and good Chriſtians; eſpecially till they leave off, not only cenſuring, but miſrepreſenting others, who, by a fair ſtate of the Queſtion, are they alone who are directly contrary to them; which himſelf is elſewhere ſenſible of, when he ſays "*of the direct contraries in all probability one is true*; but the *direct contrary* to what they hold is not, that it is *lawful for every Man to rebel when ever he thinks it neceſſary*; much leſs *when he pleaſes.*

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Pag. 1.

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Himſelf yeilds that non-aſſiſting the late King was *notoriouſly* neceſſary for preſervation of the Nation; and what reſtrains others from judging when there is the like notoriety for reſiſting? As he charges others with holding, that they *may reſiſt when and whom they pleaſe*; they may ſay that he is for not aſſiſting in the like latitude, and for cramping the Government, if he has not the Courage to attempt againſt it.

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We *may reſiſt* when the *Original Contract is notoriouſly broken*, and we *muſt not* reſiſt when the Original Contract is *notoriouſly* broken; are *contrary* and contradictory Propoſitions, one of which I grant to be true: But we *muſt* reſiſt in no caſe, and we *may* reſiſt in any caſe, when *every Man pleaſes*, or, at leaſt, *thinks it neceſſary*, are not *Contraries*,

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but *Extreams*; and 'tis odds but the Truth lies in the middle, that we may reſiſt in ſome caſe, which cries aloud, and juſtly ſtirs up a Nation, as with *the Voice of God.*

This Gentleman does not obſerve, that the Queſtion is of one who ceaſes to be *King*, according to that of *Bracton*, *non eſt Rex ubi dominatur voluntas, & non Lex*, which is not barely his Opinion, but warranted by that noble Tranſcript of the Original Contract, the *Confeſſor's* Law, which ſhews, that if a King does not anſwer the true end for which he was choſen, he loſes the Name, or ceaſes to be *King*, which was very vvell underſtood by *J.* 1. who told his Parliament, that "every juſt King is bound to obſerve "that *Paction* made vvith his People by his Laws, fra-"ming the Government thereunto; and a King *leaves to* "*be a King*, and degenerates into a Tyrant, *as ſoon as* he "leaves off to govern by Law. And thus the Proteſtants in *Germany* vvho reſiſted the Emperor, notwithſtanding their Oaths of Fidelity to him, pleaded that they reſiſted him not as *Cæſar*, but *qua non fuit Cæſar.*

Vid. J. 1. *his Speech in Parl.* March 21. *Anno* 1609.

Hornii orbis Polit. *p.* 18.

Our Author confeſſes that the late King notoriouſly ſubverted our Conſtitution, did not treat us like Engliſh-Men, but Slaves, and ſays, all grant his deſign vvas *certainly to extirpate the Proteſtant Religion, to enſlave, and conſequently to extirpate the Engliſh Nation.* And I dare appeal to Dr. *Falkner's* Chriſtian Loyalty to try ours by in ſuch caſe, where there vvas a manifeſt Renunciation of the Government as an Engliſh *King.*

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Dr. Falkner's *Chriſtian Loyalty.*

And ſurely no Man of Senſe vvill ſay, that ſuch a liberty for reſiſting, as this Lay-Gentleman imputes to the *Williamites*, can be the Conſequence of reſiſting ſuch a Prince as he deſcribes, and of exploding that Sycophantry which did encourage, and would ſupport him; or that the *beſt of Princes can need the influence of that Doctrine*, vvhich hurried on the other to his Ruin: the inſinuation of this is the greateſt Reflection which can be put, not only upon the *Friends of their preſent Majeſties*, but upon *their Majeſties* themſelves.

Tho ſome would have been ſo ungrateful to have ſent his *Majeſty* back uncrowned, after he had reſcued them from their preſent Fright, which might ſoon have been laid vvith a fevv flattering Careſſes; the Engliſh Nation abhors ſuch a Reproach: nor can their *Majeſties* ſo far depart from their own Nature, to violate that Conſtitution

which

which they have reſtored; nor yet can the confuting their ſlaviſh *Doctrine* of *Paſſive Obedience*, in the leaſt derogate from that *religious Awe and Reverence, which is due to Crowned Heads*: tho it may remove that Bugbear and *Mormo*, with which ſome would fright Mankind out of love with them. *Pag.* 36.

Nor can any good Prince's Crown be unſecure, by rejecting the deceitful Officiouſneſs of others; ſince nothing can hazard it, but ſuch extravagant Actions as a well-diſpos'd Prince can never fall into, and which by *natural* Conſequence as well as Equity, provoke a whole Nation. The Laws make all Riſings againſt the King puniſhable with Death, and therefore ſingle Perſons or Companies, in their ſound Minds, will not attempt them, but when the Cauſe is ſo apparent, that they who ſuffer them to ſtand alone in it, do but invite and encourage Attempts upon the Lives and Liberties of all: But if, as often ſuch there are, hot Men overvaluing themſelves, or the Strength of their Adherents, will endeavour to deſtroy a good Government to raiſe their Faction, or accompliſh ſome low Ends of their own; the Prince has ſufficient Security with the Laws and Hearts of his People on his ſide: And how ſtrict ſoever the Laws are, 'tis a vain thing to expect Safety from them alone, when any part of that Authority from which they flow, is render'd cheap, or invaded with an high hand. And they who think to get above all Law, will find their open Violations to give the ſame Freedom to others, which they take to themſelves.

" It ought, ſays the Lord *Clarendon*, prudently to be " conſider'd *whether People may not* be very *naturally* diſpos'd " to uſe that Force againſt him, that declares himſelf to " be abſolv'd from all Oaths, *Covenants* and Promiſes: " and whether any Obligation of Reaſon, or Juſtice, can " eſtabliſh the Government in him, who founds it upon ſo " unrighteous a Determination. *Lord* Clarendon's *Survey of the* Leviathan, *p.* 48.

As a judicious Perſon has well obſerv'd, " If ſingle Per- " ſons, or many together be injur'd by the *Prince*, they " are oblig'd to ſuffer quietly, rather than diſturb the " Publick Peace, and in this caſe *Paſſive Obedience* is a " Chriſtian Duty, and is neceſſary to the Quiet of every " Nation; ſince the beſt Governours may by miſtake injure " ſome few; and if they do ſo, that doth not break the " *Compact*, becauſe all the People *collectively*, or repreſen- " tatively, *The new Oath of Allegiance juſtified, Edit.* An. 1689. *ſold by* Ran. Taylor.

" tatively, were but *one Party in the Stipulation*; and there-
" fore thoſe Acts, by which a King muſt *forfeit*, are ſuch as
" are likely to take away the Rights of the whole People,
" or aim at changing the Form of the Government, ſub-
" verting the Laws: In ſuch caſe *Paſſive Obedience* is not the
" Duty of a *Community*, who have Rights and Liberties
" ſecured by Law; and for the whole People to ſtand by
" ſilent, and ſee that done, is the greateſt Folly, and the
" higheſt Treachery to their Country and Poſterity.

Doctrine of Non-reſiſtance, p. 1. But as this Gentleman asks, *What can the Friends of their preſent Majeſties pretend to palliate their Contempt and Scorn of the* current *Doctrine of Paſſive Obedience?* Some would ask, whether he does not exclude himſelf from the glorious number of Friends?

Nor will they be ſhy of affirming that he does ſo, when they obſerve, that he contends that they forgot their Duty

Pag. 3. both as *good Chriſtians*, and *good Subjects*, *who declared for the Prince of* Orange, *his now Majeſty, before the late King actually left the Nation.*

Yet he ſeems not aware, that while he blemiſhes theſe,

Pag. 36. with ſetting up *themſelves againſt the Doctrines* of *Chriſtianity*, he condemns, not only ſome of our *Clergy*, but the *Church of England*, for maintaining a Doctrine, which he does not deny to be deſtructive to the Conſtitution of our Government, and to Mankind: by which one would be tempted to think, that his buſineſs is, to make Men not only out of love with *Crowned Heads*, but with *Chriſtianity* it ſelf.

As to particular Perſons he confeſſes, that

Pag. 36. *the heat of Controverſy has miſled ſome of the Church of* England, *to write too much in favour of wicked and tyrannical Princes, even to the encouraging them to do worſe, than otherwiſe they would.* Where he taxes their Doctrine of *Non-reſiſtance* with *encouraging Tyranny*, and ſuch exceſſes of it, as the *Tyrant* would not otherwiſe preſume upon.

Nor does he leſs condemn the whole *Church*. *The Diſloy-*

Pag. 31. *alty*, ſays he, *of two other Parties have made the Church of* England *take into the contrary Extream; and, as a Jeſuit wiſh'd it might do her much good in ſcorn; So ſhe had like to have pay'd too dear for the pretence: and they who would now again ſacrifice her to their Intereſt and Reputation, are, to ſpeak ſoftly, none of her beſt Friends. They pretend we have not ſuffered enough for our Religion to juſtify our Reſiſtance, Why? according to their*

Principles,

Principles, we are never to reſiſt whatever we ſuffer, but to ſuffer on till there is not one left to reſiſt.

Herein I confeſs he makes a true Repreſentation of that *Principle* which himſelf runs into ſo naturally, that he is not ſenſible of it.

But is not this by him judged to be an *Extream* to be avoided? Does he not yeild that the Church of *England* has been made *to take into* this *Extream*, out of abhorrence to the other? Nay, does he not in effect admit, that himſelf and others *ſacrifice the Church* to their own *Intereſt* and *Reputation*, while, that they may juſtify their *Extream*, they condemn thoſe who avoided both *Scylla* and *Charibdis*, in Making to an happy Port, along with our *Cæſar* and his Fortune.

God forbid that it ſhould ſtill be Mens Intereſt to juſtify that *Extream!* and let them enjoy the *Reputation*, of never acknowledging an Error, tho the moſt groſs and pernicious.

But what a miſerable Defender has our *Church*, which muſt needs reject ſuch Doctrines and Defences!

> If *Church-men* are the *Church*, *States-men* the *State*,
> *Truth* may profane, or lybel elſe the *Great*.

This *Gentleman* pretends to have the *Scriptures*, and *all Primitive Antiquity* on his ſide, to which he would draw in the Church of *England*; which upon a rational Conſtruction cannot be thought to mean more than, that we are bound to obey the *King's Legal Commands*, and not to reſiſt him while he continues King: nor has that any thing againſt the Suppoſition of a Civil as well as Natural Death. And as to the two other Topicks, it is to be conſidered, 1. That the *Scriptures* meddle not with particular Conſtitutions, but give a general Rule for *Obedience* (which is more than bare *Non-reſiſtance*) according to thoſe Conſtitutions which are *God's Ordinance*, as he authorizes Human Laws, in Civil Affairs, not contrary to his own. And, 2. This *Gentleman* himſelf ſets aſide all *Primitve Antiquity* when he confeſſes, that in thoſe times *the Religion was contrary to the eſtabliſh'd Laws*; and ſo Men could not be *perſecuted* for it *againſt Law*, at leaſt not ſo as to come up to our caſe: eſpecially if we take in what he acknowledges farther;

Pag. 35. *Vid. inf.* f.

Pag. 3.

So Jovian, p. 85, 86. Julian *did perſecute them legally, ſo* vid. p. 91.

The Roman Emperors, ſays he, *under whom they liv'd, were abſolute independent Princes, whoſe Will was the Law; and the Conſtitution of the Empire differed vaſtly from that of* England,

ſo that we are not under the ſame Obligation they were; becauſe our Princes have not the ſame legal Power as the Roman Emperors had: but then I doubt not but we are as much bound to ſubmit to the legal Commands of the King of England, *as the Primitive Chriſtians to the legal Commands of their Princes. But,* ſays he, *this was no part of the Controverſy under the Reign of* James 2. *who had as little Law as Reaſon for what he did.*

If this be not a giving up all *Primitive Antiquity*, I ſhall never pretend to underſtand how words ought to be taken.

Since therefore, neither *the Scriptures, Primitive Antiquity*, nor the *Doctrine of the Church of* England are againſt them, who embrac'd and aſſiſted in the Deliverance which his preſent *Majeſty* vouchſaf'd us; it became not this *Gentleman*, who takes ſuch pains to purge himſelf from having any hand in it, to cenſure thoſe *Worthies* who had, as not
Pag. 3. behaving themſelves like *good Chriſtians* and *good Subjects.*

Pag. 3. And to call them *a few*, is almoſt an equal Reflection upon the honour of the Nation, which has never been backward in freeing it ſelf from Tyranny; and vvas ready as a Man to act in this King's Service, before they were ſo juſt as to lay the Crown at his Feet; nay, before Succeſs had crown'd his glorious Enterprize: which almoſt all were eager to evidence as they had opportunity; and I may ſay of many, with Mr. *Cowley* in his Deſcription of Envy.

" *They envy even the Praiſe themſelves had won.*

That the Body of the Nation were thus forward, is manifeſt in their declaring by their *Repreſentatives* that the late *King* had *broken the Original Contract*; vvhich muſt have been before the Judgment paſs'd upon it, or ortherwiſe the Judgment were not warrantable.

Pag. 25. When the *Gentleman* vvill allow of no Title in his *preſent Majeſty, but real Conqueſt* over the *Nation* as vvell as the late *King*, and *lawful*, meaning lineal, *Succeſſion*; either of vvhich Titles he ſuppoſes he may claim by; he would do vvell to conſider, 1. That he reflects upon the great *Repreſentative* of the Nation, which founds it upon the others Miſgovernment. 2. He ſets it all aſide, when he owns that this King does not claim by Conqueſt; nor in truth could he be a Conqueror, who was not only invited by thoſe who had a juſt Aſcendant over the Minds of the People,

but

but was pray'd for, and receiv'd with open Arms, by the Nation in general; tho indeed ſuch an univerſal Conſent, with ſuch Inducements from Gratitude and the common Neceſſity, ought to ſubdue all Scruples, as much as the moſt *real Conqueſt*.

And this *Gentleman* muſt yeild that our King does not claim as *lawful Succeſſor*, if *lawful* be confined to Succeſſion in the Line, not only as the *Predeceſſor* is alive, and two are inveſted vvith *the Soveraignty* annexed to the Crown of this Realm, which according to Dr. *H.* and others of that Notion, is *void* and *null*; but if Conqueſt (which could be no Foundation for Hereditary Succeſſion in the Conqueror) be out of the queſtion, according to this *Lay-Gentleman's* Principle, there could be no colour for the Succeſſion, but a bare *Deſertion*, or leaving the Kingdom without providing for the Government, which whether *voluntary* or *involuntary* he matters not; and conſequently, as this might be forced and ſubmitted to *animo revertendi*, that alone could not devolve a Right upon a Succeſſor: Shall no Miſgovernment whatever put an end to this Right, yet ſhall a ſuppos'd faultleſs *Deſertion*? How could any upon this Principle excuſe the Attempts for reſtoring King *Charles* the Second? Men cannot reaſonably hope to ſerve their Party with Notions, which would condemn more of them than they can pretend to juſtify.

Vid. Dr. H. his Preface to Jovian, *p.* 41.

Pag. 6.

Beſides, effectually to ſet aſide the *invidious* Suggeſtion of a *real Conqueſt* over the Nation, and abſur'd one of a legal *lineal Succeſſion*, in ſuch Circumſtances as attend this Caſe; his *Majeſty* cannot be preſumed to claim the Crown, but as he received it, nor to have receiv'd it but as it was offered, which was upon the *Vacancy* of the *Throne*, through the others Violation of the *Original Contract* between *Prince* and *People*.

But if, for the ſake of an unreaſonably *diſaffected Party*, Men ſhall be allowed to reflect, not only upon thoſe, who being duly diſcharged from their Allegiance to the late King, aſſiſted this from the beginning in ſettling the Kingdom; but upon the Proceedings of our true *Repreſentatives*, and the Settlement it ſelf, for fear leſt the expoſing their Inſolence and Folly ſhould *exaſperate* them; it would argue that diſtruſt of the Cauſe, which would be a greater Juſtification of their Inſo-

Pag. 36.

lencies, than they can derive from any other colour.

But if, as our *Repreſentatives* have judged, and thereby concluded us, the Contract was broken before they determined ſo; what ought to have reſtrain'd them, who were ſo inclin'd, and had opportunity, from meeting our *Great* Deliverer, as the Jews did *Alexander*, with an *High-Prieſt*, or *Biſhop* in the Van?

And they who leave wholly to Providence, what may require their Co-operation, deſerve an *Epicurean God*, like unto themſelves, meerly *Paſſive*, or unactive, while the World goes round.

Pag. 34. This *Gentleman* tells us, that *as we had no diſloyal Exhortations from Preſs and Pulpit to perſwade Men to fight againſt their Prince* (tho he might have met with many a ſtrong *innuendo*, enough to have ſtigmatized a poor Whig) *ſo neither had we any to perſwade us to fight for him, but the thing was committed to God to determine as he thought fit*; and he ſays, *if it were unlawful to reſiſt him, it was alſo as unlawful to aſſiſt him, and enable to deſtroy the true Religion, the Engliſh Liberties and Immunities, nay the very Nation.* Pag. 7.

Now it is evident, that if our preſent *King* had not receiv'd Incouragement from many in this Nation who had promiſed, and were ready to aſſiſt him as occaſion might ſerve, the bare non-reſiſting the late King and his Army, had enabled him to *deſtroy the Engliſh Nation*, which 'tis granted that he was bent upon; and therefore aſſiſting our preſent King was not only no Sin, but a Duty, by the ſame reaſon that it was a Duty not to aſſiſt the other.

But they who are of a contrary Opinion can by no means excuſe themſelves, for not fighting for the *late King*, or endeavouring to aſſiſt him, when he ſtood in need, and required it of them; for if he continued their lawful *King*, whom they were bound not to reſiſt upon any account whatſoever, according to this Advocate for the *Non-aſſiſters*, they were obliged to obey all his *legal Commands*; and they were certainly equally bound as they would be true to their Oaths to *bear him Faith and true Allegiance, and to their Power to aſſiſt and defend all Juriſdictions, Privileges, Preheminencies and Authorities granted or belonging to him, as King, or united and annexed to the Imperial Crown of this Realm.* Pag. 5.

This

This they were certainly bound to againſt a Foreign Force, for Preſervation of that Head of the Government, which, notwithſtanding the moſt tyrannical Sway, they will have ſtill to be *God's Miniſters* to them *for good*, and which their Prayers, and Tears, joyn'd to temporal Arms, might have rendred uſeful to their purpoſes: Tho they were not obliged to aſſiſt him in the Execution of illegal Violences, yet, if they were to bear with him notwithſtanding the utmoſt, they were in other things to help him carry on the Government: and their Sins of Omiſſion, muſt needs be as hainous as others of Commiſſion. Vid. *pag.* 1.

Nor is this *Gentleman* more happy in appealing to *Primitive Antiquity* to juſtify the *Non-aſſiſting*, than he has been for the *Non-reſiſting Doctrine*: For thoſe Fathers who forbad a Souldier's Life, did it not as 'twas in the Service of *Pagan Emperors*, but upon Suppoſition that the uſe of the Sword was unlawful for them to whom they gave the Precept, to which end *he that takes the Sword ſhall periſh by the Sword*, was applied, which yet was originally meant, only of taking it up without a lawful Call.

But *Tertullian*, on whoſe Authority our *Non-reſiſter* relies, agrees that they who had taken the Military Oath to *Pagan Emperors* before Baptiſm, were bound to fight for them; according to which, they who had ſworn Allegiance to King *Charles* the Second, his *Heirs* and *lawful Succeſſors*, and to defend the Rights of the Crown; nay, all they who had ſworn at any time before our *Seers* had their Eyes opened, by their feeling the Effects of their own Doctrine, were, upon pain of Damnation, to fight for the *late King*, till the chance of War had decided the Controverſy.

And whatever liberty of judging he charges as the Conſequence of the *reſiſting Doctrine*, will fall upon the *non-aſſiſting*, which is as truly a departure from Duty, and as great a breach of the Oath of Allegiance, while the Duty of Allegiance remains, as the other. Let him aſſign the time from whence it was a Duty not to aſſiſt, and I ſhall not ſcruple to pronounce, that from that very time Reſiſtance was as warrantable, and more honourable.

But ſuppoſe, for once, that the Primitive Fathers were againſt fighting for *Pagan Emperors*, as they were *Pagans*, and to bring it home to the late Caſe that the *Proteſtant Jacobites* were excuſable from fighting for the *late King*,

as he was a Papiſt; would not this be a virtual diſabling him from being *King* of this Proteſtant Nation? for otherwiſe, as it is an undoubted Prerogative, or Priviledg of this *Imperial Crown*, for the King to make War and Peace when he judges it fitting, notwithſtanding Mens Oaths to defend all the Regal Priviledges, they were not bound to defend this, eſpecially if the War were againſt Proteſtants; in which caſe, the Subject would take to himſelf the Judgment of the Juſtice, or Expedience of the War, as much as others do of the neceſſity of reſiſting.

Or, ſuppoſe yet farther, that the *late King* had diſcharged his Mercenaries, and commanded the *Militia*, by Law eſtabliſh'd for the Defence of the Kingdom, to march and fight againſt his preſent *Majeſty*, had not this been a *legal Command?* The King's *legal Commands*, he agrees with me, that we are bound to obey, yet he with all agrees, that it was unlawful to aſſiſt the late King againſt This, before he was crown'd: How then can the matter be adjuſted, without yeilding, that the late King loſt his *Regal Power* by aſſuming a *Tyrannical* one?

This may ſuffice to ſhew, that they who reſiſted the late King, did it not out of Principles either *Anti-chriſtian*, or *Anti-monarchical*; and that they who are for the *non-reſiſting Doctrine*, as it paſt for current in the laſt Reign and the foregoing, and yet pretend a Zeal for the preſent Government, do but daub with untempered Mortar; and as they were not to contribute to the *late Revolution*, ſo much as in their Prayers, but on the contrary were to pray for the late *King's Victory over all his Enemies*, and in effect that God would *keep and ſtrengthen* him in his Kingdom, as well as in that Worſhip, which they could not but know not to be *God's true Worſhip*; So if that miſguided Prince ſhould deſert *Ireland*, and return into their Arms, for a Puniſhment of thoſe Opinions which occaſioned his Ruine, their pretended Loyalty to this King, if they prove true to their Principles, muſt fall to the ground: And the leaſt puff of Wind, adverſe to us, but proſperous to the *Jacobites*, would blow up that Fire covered with deceitful Aſhes, to the extinguiſhing of which I ſhall readily devote my Service.

The *Lay-Gentleman* who has extorted my Reflections, by his indecent Cenſure of the Subjects of this *Monarchy*, who contri-

contributed towards the *late Revolution*, thinks it clear that the *Doctrine of Paſſive Obedience* is no way concern'd in the Controverſies now depending, between the Friends, and no Friends, if not Enemies to their *preſent Majeſties*; having, in his vain Imagination, put it paſt queſtion that the *Williamites* were neither *good Subjects* under the late Adminiſtration, nor *good Chriſtians*, and *true Members* of the Church of *England*: And that his *good Chriſtians* and *true Members* are the only Perſons, whoſe Principles may be relied on now.

Yet ſince he will have the Senſe of the Church to be known from the Cry of the *Clergy*, and a *Biſhop*, ſuppoſed to be a Martyr for it, may be preſum'd to give the Senſe of that Truth, which he would be thought to atteſt to the laſt.

If this *Gentleman* will not hear me, let him hear the *Church*, for his Conviction in this matter.

The late Biſhop of *Chicheſter*'s Paper.

BEing called by a ſick, and I think a dying Bed, and the good Hand of God upon me in it, to take the laſt and beſt Viaticum, the Sacrament of my dear Lord's Body and Blood, I take my ſelf obliged to make this ſhort Recognition and Profeſſion.

That whereas I was baptized into the Religion of the Church of England, *and ſuckea it in with my Milk, I have conſtantly adhered to it through the whole courſe of my Life; and now, if ſo be the Will of God, ſhall die in it; and I had reſolved, through God's Grace aſſiſting me, to have dy'd ſo, tho at a Stake.*

And whereas that Religion of the Church of England, *taught me the Doctrine of Non-reſiſtance and Paſſive-Obedience, which I have accordingly inculcated upon others, and which I took to be the diſtinguiſhing Character of the Church of* England, *I adhere no leſs firmly and ſtedfaſtly to that, and in conſequence of it, have incurred a Suſpenſion from the Exerciſe of my Office, and expected a Deprivation. I find in ſo doing much inward Satisfaction, and if the Oath had been tendred at the Peril of my Life, I could only have obey'd by Suffering.*

I deſire you, my worthy Friends and Brethren, to bear Witneſs of this upon occaſion, and to believe it as the Words of a dying Man, and who is now engaged in the moſt Sacred and Solemn Act of

converſing with God in this World, and may, for ought he knows, to the contrary, appear with theſe very Words in his Mouth, at the dreadful Tribunal.

Manu propriâ ſubſcripſi,

Johannes Ciceſtrenſis.

This Profeſſion was read, and ſubſcribed by the Biſhop, in the Preſence of

Dr. *Green*, the Pariſh Miniſter, who adminiſtred.
Dr. *Hicks*, Dean of *Worceſter*.
Mr. *Jenkin*, his Lordſhip's Chaplain.
Mr. *Powell*, his Secretary.
Mr. *Wilſon*, his Amanuenſis, who all communicated with him.

Here 'tis obſervable;

1. That the *Biſhop*, as fallible as an inferior Clergyman, died in that Opinion, which he had profeſs'd and *inculcated* in his Life-time, ſo warmly and ſo often, that himſelf believ'd it: Tho it may be a Queſtion, Whether he would on his Death-bed have affirmed (as he had done in his Pulpit, where Mens Affirmations ought to be as ſolemn as at the laſt moments of Life,) That they could not enter into Heaven without particular Repentance, who in deriſion were called *Ignoramus Jury-men*; becauſe they would enquire into the Credibility of Witneſſes, and ſcorned to enſlave themſelves to the Directions of Judges, or more powerful Influences from *White-hall*.

Sermon at Tunbridg.

And tho it ſeems the *Tower* had not wean'd him from his fondneſs of *Paſſive Obedience*, perhaps it did from that which he had expreſs'd towards our then Court's firm League with *France*, while he believ'd it deſign'd to curb none here but the *Fanaticks*.

Theſe ſevere Truths, tho in proof beyond Contradiction, I ſhould gladly let lie buried with him, were not his Ghoſt ſtill kept walking to do Miſchief.

Vid. *the Defence of his Profeſſion concerning Paſſive Obedience, and the new Oaths*, Ed. *Anno* 1690.

And if the Authority of a Man's Perſon or Office ſhall, without any other ground, be ſet up to condemn the far greateſt number of Perſons, of at leaſt equal Credit and Station, it is no more than requiſite to ſhew that this Man

is

is not more than others, exempted from Errors, and the common Incidents to Humanity.

2. The *Biſhop* ſhews, that the *Doctrine of Paſſive Obedience*, which he had *inculcated*, as the Doctrine of the Church of *England*, and which he found himſelf oblig'd to propagate at his Death, is ſo far concern'd in the Controverſies now depending, that upon the account, or in *conſequence* of holding to it, he had incurr'd Suſpenſion, and expected Deprivation, for not taking the Oath of Allegiance to our preſent *King* and *Queen*; wherein he abundantly confutes our Son of the Church.

And all the Authority which can be deriv'd from the *Biſhop*'s Dying-Declaration, to prove the *Doctrine of Paſſive Obedience* to be the Doctrine of the Church of *England*, equally proves that this is eſſential to the Controverſies depending, between the Friends of the late Government, and the happy Subjects of this.

As a juſt Corollary from which, we may affirm, that no Man who is true to the Doctrine of *Non-reſiſtance*, or *Paſſive Obedience*, can bear Faith and true Allegiance to our *King* and *Queen*. In conſequence to which, as I have above ſhewn, ſuch are bound to their Power to aſſiſt the late King, and to maintain the Regal Rights which he ſtill claims, as King of *England*; if they are entruſted with any of our *King*'s Secrets, to reveal them to the other; and to employ all thoſe Advantages, which his *Majeſty's* Favour may give them, towards the advancing that Intereſt, to which they believe themſelves *unalterably* bound. *Preface to the Hiſt. of Paſſive Obedience.*

And tho our King, with the Generoſity of *Alexander*, may truſt himſelf with them, of whoſe at leaſt probable Deſigns, he may have certain Information; yet no Man need *wonder* that his Friends offer him the Notice, and that they would have that Doctrine *extirpated* out of the World, without vvhich, it vvere impoſſible for him to have an Enemy in the Engliſh Nation, but a Papiſt. And even among them, I dare ſay, all but the bigotted Slaves to their *Clergy*, are ſenſible of the benefit of his Protection; and may encourage themſelves in civil Obedience to him who is King over them, from the Examples of St. *Anſelm*, with other holy Men, and the generality of their *Clergy*, who quietly obeyed the Power vvhich protected them, without conſider-

ing, whether the Perſon who adminiſtred it ſtood next in the Line, or no.

And tho it may be excuſable for a dying-Man to juſtify his own Sincerity to his private Friends; yet when the matter vvhich he affirms is of ſuch Conſequence to the Peace of that Government which had reſcued him, and the Church in vvhich he had ſuch a Truſt, from impending Ruin, and afforded it and him ſure Protection, tho he had diſabled himſelf from farther benefit; he ought not, certainly, to have taken ſuch Pains to tranſmit his Opinion to the knowledg of the unthinking Vulgar, who vvere likely to be influenced by it; unleſs he vvere certain, beyond the leaſt ſhaddow of doubt, that this was not only a Truth, but of ſuch a nature, that the Sin of Ignorance in others were damnable: Or elſe, that the Reſtoration of the *late King* were preferrable to Submiſſion to *this*. The laſt, I hope, his Admirers vvill not ſay; and ſince the firſt evidently depends upon Points of Lavv; tho ignorance of human Law cannot reaſonably excuſe before Men, who know not the Heart, and when the Plea ought to be allowed, when not; yet there is no doubt but it will before *God*.

But who would not be *impatient* to find our great Law-Caſuiſt Dr. *H.* to juſtify his Diſaffection to the Government, under the Umbrage of the Biſhop's Declaration, and to boaſt himſelf a Confeſſor to this pretended *Martyr*, vvithout producing more colour for it, than a dying-Biſhop's Belief, that this is in Conſequence of adhering to the Religion of the Church of *England*.

Had any one publiſh'd thus much in the Reign of *Innuendoes*, when Dr. *H.* was the Trumpeter to the *Imperial Power*, in Contradiſtinction to the *Political* one, he vvould have met with Col. *Sydney*'s Doom, who ſuffered for publiſhing *Hickſian* Treaſon all over his own Study.

Jovian, p. 236. And were Dr. *H.* to be judg'd by his own Law, 'tis certain he vvould be pronounc'd a Traitor, if the Publication of this Paper vvere prov'd upon him. For in his *Jovian* he ſays, *What tends to Treaſon is Traiterous.*

The Lord *Hollis* his Book againſt the Biſhop's voting in Capital Caſes; he ſays, *for the ſame* Reaſon is *an impious* and *treaſonable Book*; becauſe it *abounds with Falſifications of Records*, &c. and aſſerts that the *King is one of the three Eſtates.*

Eſtates. And the *Dialogue between the Tutor and Pulpit is a treaſonable Piece, becauſe it miſrepreſents the Engliſh Government, as if it were a Reciprocal Contract betwixt the King and the People; and as if the Parliament ought, whether or no the King pleas'd, to ſit till all Grievances were redreſs'd, and Petitions anſwer'd.* By the laſt of which the Biſhops were Traitors for their Propoſals to King *James*. And by the former, all thoſe Paſſive-Obedience-Men are Traitors, who publickly maintain an Opinion which neceſſarily implies, that the Right of the laſt King could not be alter'd or diminiſh'd, for any matter which induc'd King *William* to undertake our Deliverance. Pag. 237. Vid. *the Biſhops Propoſals.*

If Men of the Doctor's Opinion will be *exaſperated* for being driven from their Coverts, they ſhould conſider that they ought rather to be thankful, that they are put to no further Mortification, while they ceaſe not to give jealouſy to the Government, by maintaining or patronizing, what is inconſiſtent with that Peace, vvhich they are bound to pray for.

But Dr. *H.* it ſhould ſeem, now aims at the Glory of taking that *boldneſs and liberty of ſpeaking and acting*, vvhich he ſays was *common among Confeſſors, by which they ſhewed the greatneſs of their Zeal to ſuffer for God: and how much they deſpis'd that Authority* vvhich was over them, *in Competition with their Duty to God.* And this may be to retrieve his Reputation for not calling the late King an *Idolater, a Bread-worſhipper, a Goddeſs-worſhipper, a Creature-worſhipper, an Image-worſhipper, a Wafer-worſhipper*, &c. which we might have expected for the making good his Vapour before he came to the Trial. Jovian, p. 104. Ib. pag. 96.

Did his then Silence agree with that *ſupernatural Courage*, which he vvas *fully perſwaded God* would *inſpire* him with? Pag. 297.

And does it not ſeem odd, that the Inſpiration ſhould ſeize him to the Prejudice of that Government, under which alone it can reaſonably be expected that Proteſtancy can be ſupported; but ſhould be vvanting in a Popiſh Reign? The Jews had a Divine Caution againſt receiving even thoſe Prophets who vvrought Wonders, if they labour'd to withdraw Men from the Worſhip of the true God. And ſurely Proteſtants would not ſcruple to reject the Doctor's Pretences to Inſpiration, which ſome vvould be ready to aſcribe to that Spirit vvhich himſelf had found out for the fluency Vid. *Dr. H. his* Raviliac Redivivus.

fluency of ſome Mens Prayers, or rather to that *lying Spirit in the Mouths of the Jewiſh Prophets*, which encouraged *Ahab* to go out to fight, for what had formerly been in the Poſſeſſion of the Crown of *Iſrael*.

3. The Biſhop will have this Doctrine of Paſſive Obedience to be the *diſtinguiſhing Character* of the Church of *England*; and therein admits, that ſhe holds it in a manner differing from all other Proteſtant Churches. And if this be ſo, the acting or believing according to it, can be incumbent only upon the *unfeigned Aſſent and Conſent*-Men. But we of the Laity, vvho believe our ſelves to be true Members of the Church of *England*, may be allowed to act without any regard to that Principle, which vvould diſtinguiſh us from all other Proteſtants. And how much ſoever ſome may be concern'd to keep up the Diſtinction, 'tis to be hoped that we ſhall be more wiſe, and more true to the Intereſt of the Church univerſal.

If, as the Biſhop ſays, the Religion of the Church of *England* has taught this, and this is *the diſtinguiſhing Character* of this Church, vvill not Men ſay that he makes this Church to have a Religion as well as Ceremonies of its own?

The Miſchief of Separation.

A Prelate more deſervedly eminent, tells us, That the ſign of the Croſs is the Right of Admiſſion into the Church of *England*, as Baptiſm into the Catholick. But according to this Biſhop, the Admiſſion into our Church ought to be upon the Condition of ſubſcribing this Doctrin, which his God-fathers and God-mothers were to have promis'd and vow'd in his Name. And then, tho he had not, like Dr. *H.* (who, perhaps, herein played the Plagiary from *Jovian*) ſuck'd in this Religion with his *Milk*; he might well have been *baptiz'd* into it.

Jovian, *p.* 227. *ſpeaking of the Church of* England *and himſelf*, "It is ſhe that "taught him to preach up "Paſſive Obedience, like a "Paraſite, Sycophant and "Murderer: Poor Man! *he "ſuck'd it in with his Mo-"thers Milk.*

The Reaſons of this *Biſhop*'s maintaining and endeavouring to propagate his Opinion, to the Diſturbance of our preſent Settlement (next to his Obligations to the late King, which the firſt miſunderſtanding was not to erace) were apparently,

1. The ſourneſs of the *Milk*, which he had ſuck'd in from his Nurſe or Mother; which is known to have a great influence upon the Conſtitution of the Body, and that upon the

the Mind; inſomuch that Mr. *Dreyden*, and ſome other ſuch Philoſophers, have inſinuated that the Soul is nothing elſe but the Temperament of the Body.

2. The prejudice of his Education, whereby he was taught to believe this to be part of his Baptiſmal Vow. Which being the only Reaſon that he has thought fit to bleſs us with, as judging it ſufficient; in following this Epiſcopal Authority, he who was bred a *Pagan* ought to be a *Pagan* ſtill: And if we believe a topping Divine of the Church of *England*, the *Pagans* can produce better Reaſons for their Infidelity, not only than any we have yet had for this *diſtinguiſhing* Piece of Religion, but, than can be brought for Belief in the true God, without having recourſe to the Scriptures interpreted by the Church. But the Church which he complemented being the Church of *England*, the Popery of his Notion went down very glibly at that time, as the Authority of this ſingle Biſhop does with many now.

Vid. Warley's *natural Fanatick, dedicated to the then Chancellor of* England. *F.*

3. The Weakneſs of his Judgment, which is obvious, not only in the wording his dying-Paper in ſuch a manner, as either condemns his own Church of Singularity, or all others of Corruption, in departing from that Religion which ſhe alone has the honour to profeſs; but farther yet, if he were in his ſound Mind at the ſubſcribing his own, or Dr. *H.* his Confeſſion of Faith, he would have reflected, that tho he might have done enough to quiet his own Mind, he had not us'd due means for informing himſelf of what he ought to preſs upon others, as a neceſſary matter of Belief; having debated it either with Divines, who are but ſecond-hand Caſuiſts for this, or elſe with *Lay-men* of the *Gentleman*'s Opinion, who would maintain the Doctrine of Paſſive Obedience, and yet exclude it out of the Controverſy which it has rais'd and keeps up.

I ſpeak not this without grounds: for in debate with a Divine of our Church, whoſe great Worth, Learning, Moderation, and Integrity have juſtly rais'd him above all degrees in Station; the Biſhop did frankly confeſs, that he believ'd the Queſtion to iſſue in a Point of Law: And for his Satisfaction he had diſcours'd with a certain *eloquent Perſon*, whom he nam'd, ſuppos'd to have *ſuck'd in* Law with his *Milk*, as the Biſhop did his new Divinity, nurſ'd

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up ſince Queen *Elizabeth*'s days. But this *Perſon* being one who has acted upon the ſame Principle, and makes it his Glory not to have his Opinion alter'd by his place; I think no Man who obſerves what lame work the *Lay-Gentleman* has made, of endeavouring to reconcile the *Doctrine of Paſſive Obedience* with Submiſſion to our preſent Government, will wonder, that he could not receive Satisfaction from one, who held the ſame Premiſes with himſelf, but denies the Concluſion.

This ground for the Biſhop's Pertinaciouſneſs, I muſt own, is not evident to all: but his conſulting Dr. *H.* is; who, I may well ſay, is hardened and ſteel'd in his Profeſſion beyond hopes of Conviction; ſince by the Writer of this, he was long ſince admoniſh'd, of having ſhamefully abus'd thoſe Authorities on which he relied, and of having, by his Conceſſions and Contradictions, fully ſet aſide all that he would enforce: and this at a time, when this Writer ran the utmoſt hazard by expoſing a Man, thought ſo highly to have ſerv'd them who were in Power, and called themſelves the Government; And when the Doctor, by refuting the Objections, might have had the Reward, as vvell as boaſt of a Triumph.

Vid. *Letter to* Jovian, *Ed. An.* 1683. *p.* 14.

Yet for the Comfort of them vvhom he then trampled upon, he had diſabled himſelf of his Sting, vvhile he quitted the Authority of a Preacher of God's Law, for a partial Reporter, and Expounder of Man's.

His Errors or Perverſions, as far they concern our preſent Controverſy and Government, may be reduced to two Heads.

1. The Eſtate in the Crown, and Derivation of it.
2. The Rights or Prerogatives of the Crown.

1. For the firſt, he ſays, this Kingdom is originally hereditary, in an *inalienable*, *indiviſible*, *lineal Succeſſion*, by the *Original Cuſtom and Conſtitution of the Engliſh Government*, ty'd to the *next of the Blood*: Or, as he has it elſewhere, *fix'd in one Family*, and *lineally deſcending in Proximity of Blood*. With this *Hereditary* Monarchy an *Interregnum*, or Vacancy of the Throne, is inconſiſtent, as alſo its deſcending *upon two Heirs at once*.

Preface, Pag. 13. 11. 9. 78. 5. 53. 60. Jov. *p.* 38. *Pag.* 25. *Preface*, *Pag.* 55.

The Succeſſion vvhich he deſcribes, he ſays is from *God alone, who hath given it to the Royal Family for a perpetual Inheritance*,

ritance, and hath by his Providence ordain'd, that it ſhould come to one of them after the Deceaſe of another, according to Birth-right and Proximity of Blood: But *God's Providential Appointment of one to reign*, he grants, not of it ſelf, to carry the Right beyond the Perſon in Poſſeſſion by ſuch Appointment: Wherefore tho God's Providence had often given the Roman Empire to a Man, and ſome of his lineal Deſcendants after him, he contends, that the *Roman Empire* was not *Hereditary*, but *Elective*, by the *Suffrage of the Legions*, and *the Conſent of the Senate*, according to the *Cuſtom of the Empire*: And ſo was, in his Senſe a *Republican ſort of Monarchy*; and *Heirs*, ſays he, *among them is to be taken* in the Senſe it then had, for choſen, or conſtituted Heirs, or Succeſſors. *Pag.* 58. *Pag.* 46. *Pag.* 52.

But the firſt riſe of the Cuſtom concurring with *God's* Providence to fix the Crown here, he makes to be the reputed *Norman Conqueſt*, which *firſt brought in this limited way of hereditary Succeſſion unto one Line.* *Pref.* p. 7.

This I take to be a true and full Scheme of his Notion upon this Head; whereby it appears, That it wholly condemns our preſent Settlement, as againſt that *abſolute Right or Birth-right*, to exclude vvhich, even in Reverſion, he ſays, *would be to oppoſe the Will of God.* And yet till he diſprove what I ſhall offer againſt the belief of a Conqueſt made by *W.* 1. or ſhew either that Cuſtom or Conſtitution which proves that the Crown of *England* has, ſo much as ſince the *ſuppoſed Conqueſt*, been ſtrictly and indiviſibly tied to him or her who either was in Poſſeſſion, or expected it, as next of Blood; I may affirm, that according to his own Hypotheſis, God has not ſo given it *in his Providence.* *Pref.* p. 56.

I vvould deſire no greater ſcope to prove our Government to be fundamentally an *Elective Monarcy*, keeping within a Family, but not confin'd to the next of Blood, than he takes to prove the Roman Empire to be *Elective.* Nor vvould I deſire any other Juſtification of the preſent *Oath of Allegiance*, notwithſtanding the former to the King, *his Heirs and Succeſſors*, than what himſelf vvould allow of in the *Roman Empire.*

But if *God* has by his *Providential Appointment* transferred our Allegiance to our preſent *Soveraigns*, and no ſuch Original Conſtitution or Cuſtom, as is pretended, can be produced, which I have formerly evinced, and more at large in the following Treatiſe, the *Doctor's* Foundation of *unalterable* Vid. *the Preface to Predictions concerning this Government.*

alterable Allegiance to the laſt *King* failing, 'tis odds, but an Agreement between a *King*, with the *Lords*, and a *full Repreſentative* of the *Commons* of *England*, will bid fairer for being according to the *Original Conſtitution* of our Government, than the *Doctor*'s fancied Fundamental, and *indiviſible* Entail of the Crown.

If *Conqueſt* only, without any Original Entail by the *Conqueror*, or Conſent of the Conquer'd, has fix'd it to the next of Blood (tho in truth the *Providential Appointments*, till the Settlements occaſioned by the Quarrels between the two Roſes, have generally been otherwiſe;) then 'tis plain that this is ſuch a Right as may be entirely loſt by the conquer'd Poſſeſſor. And as *Will.* 1. conquer'd *Harold*, tho he did not conquer the Kingdom, having been deſign'd Succeſſor in the *Confeſſor*'s time, and after invited by the Clergy chiefly; and coming to a ſpeedy Agreement with all in general: So this King conquer'd the late; for he who runs away without fighting, is at leaſt as much conquer'd, as he who fights and is beaten; nay, in truth, more abſolutely: for he that is beaten, generally gets ſome Terms for himſelf, whereas the other dares not ſtay to take them.

Vid. inf.

2. As to the Rights, or Prerogatives of the Crown, by ſuch an impious vvay of uſing Quotations as he unduly charges upon the Lord *Hollis*, he goes about to prove, that all that Soveraign Power by which the Nation is govern'd, which muſt be equally abſolute in all independent Governments, (in which ſenſe all Crowns that are not Feudatory, or any ways under a Foreign Power, are *Imperial*) is by our Conſtitution veſted *ſolely* in the Perſon of the King.

Pag. 240. "In the Engliſh Government, ſays he, tho the Houſe of "Commons bears the ſhew of a Democracy; and the "Peers look like an Ariſtocracy among us, yet our Go- "vernment is a perfect Monarchy, becauſe the Supream "Power is, as I have proved, neither in the one, nor in "the other, nor in both together; but *ſolely* in the Perſon "of the King.

Vid. Grot. de ſummâ poteſtate, ſubjecto poteſtatis, & modo habendi poteſtatem.

Where he is not ſatisfied to have the *Supream* Power in the *King* in a *ſupream manner*, ſo as neither *Commons* nor *Lords*, nor both, have it equally or *co-ordinately*, but nothing leſs than the *abſolute manner* will anſwer his Scheme, as will appear farther.

"I

"I was the more willing, says he, to make this Obser- Jov. *p.* 240.
"vation, that when I speak of *Soveraign Princes*, I may
"not be maliciously traduced, as if I spoke of them exclu-
"sively of other *Soveraigns*, as if *Monarchy* were of *sole*
"*Divine Right*. For want of this Distinction, other Writers
"have had this invidious Imputation laid upon them. But
"this Reason of not resisting the *Soveraign*, because he is
"*God's Vicegerent*, and only subject to him, is a common
"Reason of *Passive Obedience* to all *Soveraigns*, *as well as*
"*unto Kings*, and unto *Kings* as well as unto any other
"*Soveraigns*, &c.

"If the Government of Men, as well as Angels, be
"from *God*, then it must follow, That upon whomsoever
"God is understood to bestow the *Soveraign* Authority, he
"must also be understood to bestow upon him all the essen-
"tial Rights of *Soveraignty*.

'Tis manifest that this is upon Supposition that *God* has bestowed the *Soveraignty* absolutely; for otherwise every one who has the Name of *Soveraign*, would be equally entitled to all the Rights: And where *God* has not bestowed all the *Essential Rights*, 'tis as evident that he has not bestowed the *Soveraignty absolutely*.

Accordingly, himself owns, that the *Soveraign must be* Pag. 239.
always understood the real, and compleat Soveraign: because there are many seeming Soveraigns, which are not really such: and instances in the *Kings* of *Sparta*, subject to the *Ephori*, who being appointed by the People, he says, *The People themselves were the real Soveraign next under God.*

Upon which some may ask, Whether if our Constitution in some case warrant taking up Arms without, or against Command from the *King*, that may not be done by the Authority vested in the People, for preserving the Constitution, without using the *traiterous Position* that the *King*'s Authority may be turn'd against his Person? And whether if there be such a real *Soveraignty* lodg'd with them to that end, and the Constitution likewise in some Cases discharges Allegiance, and makes the Person to whom it was sworn *cease to be King*, this Right can be alter'd or diminish'd by the Declaration, that it is not lawful to take up Arms against the *King*?

But to proceed with the Doctor.

Pag. 242. *In all Soveraign Governments Subjects muſt be Slaves as to this particular; they muſt truſt their Lives and Liberties with their Soveraign:* Which with us he ſuppoſes he had prov'd to be the *King*, according to all the Rights of abſolute, or *compleat Soveraignty.* And having ſtarted up an *Imperial Law*, Pag. 202. or *Common Law of Soveraignty*, for the evacuating the Political Conſtitutions of this Nation, made in the compleat Exerciſe of the *Soveraignty*, *I am ſure*, ſays he, *in this Realm* Pag. 226. *the Soveraign cannot wrong nor injure his Subject, but contrary to the Political Laws*; where perhaps he may ſerve himſelf of Leviathan, *f.* 98. Mr. *Hobbs* his Diſtinction, that his Soveraign *may commit Iniquity*, but *not Injuſtice* or Injury in the proper Signification.

And thus a King of *England* has Right to make his Subjects Slaves when he pleaſes. Tho this naturally follows from the *Doctor*'s Tenets; yet one would have thought that in Prudence this frightful Conſequence ſhould have been left for others to find out; were it not that there was ſome reaſon to believe, that by ſuch Prints and Preachments the People had been ſufficiently prepared for Slavery.

But here indeed the *Doctor* admirably diſtinguiſhes, that this is with relation to particular Perſons, whom he may Pag. 192. deſtroy one by one, or Company by Company, yet *he has no Right to enſlave the whole People, by altering the Conſtitution of the Government from a Civil into a Tyrannical Dominion*, &c.

Yet even in this Caſe he allows of no Reſiſtance, but that ſtill being upon Suppoſition that the Power, which was reſtrained in the Exerciſe (a Power to act, and not to act) was veſted abſolutely in the *Soveraign*; till he proves it ſo here, all his Authorities from Scripture, Homilies, or elſewhere, fall beſide the Queſtion, which is of one aſſuming an *abſolute*, or *imperial Power*, when the Conſtitution gave no more than *Political* one; according to his own Quotation Vid. Fort. de laudibus Legum Angliæ. out of *Forteſcue*, explain'd by the whole courſe and deſign of that admirable Vindication of our Laws.

After all, he owns the whole to be a Controverſy of Law, that *all the Laws of Men*, are *the Laws and Ordinances of God.* And ſo God's Law places the abſolute Soveraignty where-ever Man's Law does.

Wherefore from the whole it follows,

1. That

1. That Lawyers are the beſt Caſuiſts in this Point.

2. That if our Law requires true Allegiance to be paid to the *King* in Poſſeſſion, and allows of all Conſtitutions made by him with Conſent of *Lords* and Commons duly repreſented, then the new Oath of Allegiance is required by an *Ordinance* of *God*; and they who refuſe it fight againſt *God*. For the not obeying lawful Authority is evidently more a reſiſting *God*, than the forcibly oppoſing a pretence to Authority neither deriv'd from *God*, nor Man.

This Inference I muſt own will not reach thoſe *Paſſive-Obedience*-Men who believe that *Monarchy* is the only Govenment of *Divine Right*, or that human Choice or Conſtitutions cannot intervene in the diſpoſal of the *Soveraignty*, nor yet Dr. *H.* his own Notion of the Original Entail of the Crown.

But till the *Doctor* has anſwer'd the Letter formerly addreſs'd to him, or rejoin'd to Mr. *Johnſon*, I ſhould think this enough for his Conviction, tho I do not expect that he will confeſs it; For the keeping up a Reputation with a Party, in hopes to become an Head, is a probable means for making good Terms for ones ſelf: And then the Party may ſhift for themſelves. And this the *Doctor* may do the more honourably, having dropp'd ſome Expreſſions, which a Man of leſs Art and Subtilty than himſelf, may eaſily turn to the Service of the Government that is uppermoſt.

In the mean while, the poor *Biſhop*, either through the Prevalence of his Diſtemper, the Weakneſs of his Judgment, or Violence of the *Doctor*'s Importunity, has been induced to ſubſcribe a Paper which may do much harm among them, to vvhom a Biſhop's dying vvords, concerning matters of vvhich he was no competent Judg, are of more weight, than the cleareſt Reaſons, and moſt undeniable Authorities.

The Cenſure of the Obſervations upon Mr. Johnſon's *Remarks.*

Upon the *Biſhop's* Principle of affected or acquired, I am ſure unnatural *Religion*, the ſcurrilous *Obſervator*, upon Mr. *Johnſon's* Remarks, chews the Cudd, in repeating his delight in thoſe Sufferings, vvhich are more the Reproach of ſome of either Gown, than Mr. *Johnſon's*; vvhich however this vain Writer, if Humanity, and the Conſciouſneſs of his own Deſerts, could give leave, vvould juſtify *ex poſt facto*; but out of his great Tenderneſs allows him the choice of Death, as a gentle Commutation of Penance.

P. 6. *You have ſign'd a kind of Poſthumous Apology for your Judges, and almoſt juſtified the* Inhumanity *of your Sentence.*

Upon this Principle he imputes to that extraordinary Perſon *perfidious Apoſtacy* from the Church of *England*, and the *abdicating* his *Religion together with his King*, threatens the Nation with Judgments, *becauſe they have not kept* their *Maſter, the Lord's Anointed*; and charges all them, who having ſworn Allegiance to the late King ſwear now to this, with *Perjury*, in ſwearing *a direct Contradiction* to what was *lawfully ſworn* before; as if we might not, without danger of contradicting the former Oath, go upon the Suppoſal, that there may be a Civil, as well as Natural Death of a King; that an Oath ſworn to a Perſon as legal King, and in relation to the Laws, has no force, when the Law is either ſubverted or altered, or that the Law may transfer Allegiance from the Perſon in Poſſeſſion, to a Succeſſor legal by the Conſtitution of the Government, without need of *Abſolution* from any Power whatever: Dr. *H.* would teach this younger Brother, that paying Allegiance to ſuch a Succeſſor is part of the Oath, tho indeed there is a Queſtion between us, what Succeſſion the Conſtitution requires or warrants.

Vid. *Tit. Page.*

Pag. 14.

Jov. *Pref.* p. 53.

The Doctor contends that Faith and Allegiance is promiſed to the *poſſible Heirs*, according to the *ordinary Rule of Succeſſion, the Original and Fundamental Cuſtom of this Realm*, to which he gives the addition of *Hereditary*.

Vid. *Pref. to Predictions of* Noſtredamus, Grebner, *&c.*

If therefore, as I have formerly ſhewed at large, and now in the following Treatiſe, our Allegiance has been duly transferr'd according to the *Original and Fundamental Cuſtom* of this Realm, (whether *Hereditary* or not, or how far ſtill being ſubject to that Cuſtom) then this removes all danger of Contradiction, and neceſſity of Papal or other *Abſolution.*

But the Spirit of Contradiction is a Diſeaſe which aſſimulates whatever comes in its way; and it may be very dangerous to meet this Zealot in his Paroxiſms, leſt he drive you to the Wall, and force you to confeſs, that a legal King and a Tyrant are but the ſame under different Names, and that the maintaining Tyranny is imply'd in ſwearing to defend all the Rights of this Imperial Crown, and Political, not Deſpotical Monarchy. I am not enough diſpos'd for Sport to obſerve all the Follies of his Invective, but I am ſure the Government will not allow Mr. *Johnſon's* ſound Aſſertion, that *no Man can authorize himſelf, in Abatement of the*

Pag. 3.

Guilt

Guilt of denying that *Authority* which made the Oath; ſince that Authority was received from God, who has not only in his Providence permitted, but by a ſignal Interpoſition aſſerted, that Original Conſtitution of our Government from whence our Laws and Allegiance are, under God, derived; nor will it excuſe his malicious, as well as falſe Inſinuation, of *no Title* in our King, not *one Precedent* to warrant it, his being only King *de facto*, and that thoſe Inducements, which mov'd the Compaſſion of our great Deliverer, were *Lies and Forgeries without which*, ſays he, *they could never have driven their Maſter away.* Pag. 21.

Wherein, tho he is more daring, yet he is more cunning than the *Gentleman*, who with Lay-ſimplicity yeilds the whole truth of the late King's ſubverting the *Conſtitution*, while the more ſubtile *Clergy-man* denies all, and puts us to prove it; after it has been found by the Grand Inqueſt of the Nation, and confirm'd by the moſt Authoritative Judgment, which is of leſs weight with him than the haſtieſt Church-Cenſure. I would gladly know of him, whether notwithſtanding that Precept, *Touch not mine Anointed, do my Prophets no harm*; he has not deliver'd, or been ready to deliver many of God's choſen or *anointed* People over to Satan, and the Secular Power, without enquiring into the ground of the Sentence? And, whether the Unction of the Spirit is not as ſacred, as that which is us'd to Kings, and the right to the Sacraments and Chriſtian Aſſemblies, from which he vvould not ſcruple to debar many in virtue of an Eccleſiaſtical Cenſure, as Divine, as a Right to a Crown?

But, as he affirms that the late King was driven away by *Lies and Forgeries*, he inſinuates that this King's Government was founded upon them, and ſtands in need of them for its ſupport, than vvhich he may vvell ſay *there cannot be a greater Evidence of a bad Cauſe*; yet nothing but aſſurance in ſome hidden ſupport could make him thus inſolent, and confident that his *Tongue* or *Pen* has not been *too familiar with his Thoughts*; and it is very pleaſant that he ſhould ſtill pretend to vvant Impunity for venting his *lurking Scruples*, Pag. 21. Pag. 5.

as if his bold Dogmatical Aſſertions, directly againſt our preſent Government, and in defiance of it, were more ſafe than the proving matter of Fact contrary to what others alledg, the falſifying their Quotations, or ſhewing the weakneſs of their Inferences; wherein he might with ſafety to himſelf expoſe his Adverſary, as he thinks he does Mr. *Johnſon*, for betraying that Cauſe which he pretends to ſerve: But perhaps he believes that if he ſhould be thus cautious; he ſhould loſe his Reputation vvith his own Party, and give the Government encouragement to puniſh him, vvhich he may fancy that it dares not do, vvhile he talks big, and ſeems aſſur'd of being ſtrongly back'd.

But it may not be amiſs to take a nigher view of the Folly as well as Inſolence of his Boaſt, what feats he could do if the Law vvould ſtand Neuter for a while.

The Obſervator's ridiculous Challenge.

He promiſes in his *own, and believes* he may *in the Name of* all his *Brethren, that are yet unſatisfy'd*, that their *refuſal to comply ſhall lie no longer hid in lurking Scruples, and Reaſons beſt known* to themſelves, *than till* their *Superiors ſhall be pleas'd, with Indemnity, to allow them to bring them forth.*

Having, as he thinks, made this fair Challenge, he concludes that it is, *Uncivility, Rudeneſs,* and an *ungentile Inſolence to provoke them whoſe Hands are tied.*

It ſeems they would be at liberty to condemn this Government, as illegal, and founded upon Injuſtice: But if a Reaſon for this be demanded, O Sir! our Hands are tied, provoke us not by aſking vvhat is not in our Power; we can rail, and call you Rebels, inſinuate that your King has no Title, your Laws no Authority, but you are very *uncivil* not to allovv them vvho can give no Reaſon, to rail on without it.

However this Man undertakes if he might have Indemnity in ſpeaking out, at the *forfeiture of his Head*, vvhere he ſays Mr. *Johnſon's is due*, before Judges appointed by the Government, to anſwer thoſe Queſtions, *which he* owns *no*

Man

Man dare be ſo bold as to anſwer, and to back thoſe Anſwers with ſuch Reaſons, which ſhall enſure him the Privileg of being for Mr. Johnſon *unanſwerable.*

Before the Judges have been appointed, he concludes, that Mr. *Johnſon's Head is due* for writing againſt the late King's Title: and, with at leaſt as much Equity, we may ſay, that his Head *is due*, for writing againſt the Title of this.

But ſince he is willing to loſe his Head, if he cannot ſatisfy ſuch Judges, it is a pretty ſort of Indemnity which he deſires, not to loſe his Head for any thing which he may offer before the Judges; when he conſents to loſe it, if what he offers is not back'd with ſatisfactory Reaſons.

Has he more to preſs, or could he do it more cogently, than Men of his Mind did in Parliament, where there was full liberty of Speech? Or is it to be ſuppos'd, that there was not as good a Diſpoſition in the Majority of them whoſe Votes carry'd our Settlement, to liſten to ſuch *unanſwerable Reaſons*, as he can expect from any appointed to be Judges of the Controverſy; but perhaps, obſerving what Indulgence his Principle has met with, he may hope that he, or Men of the ſame Leven might influence the Nomination of the Judges; and 'tis evident that therein muſt lie the only colourable ground of his confident and ridiculous Challenge. Tho there is no Reaſon to apprehend that *Innuendoes* ſhould be now, as they have been in thoſe times which he juſtifies, when they were admirable Engines to dive into the bottom of the Heart, and fetch up thoſe ſecret Intentions which no foregoing Diſcourſe led to; yet, as one of the other Gown, I ſhould adviſe him for the future, not to make his *Pen* ſo *familiar* with his Thoughts as he does, where, ſpeaking of Mr. *Johnſon's* Aſſertion, That *King* William *is the rightfulleſt King that ever ſat upon the Engliſh Throne*, which he may very well be, without ſuppoſition of coming to it in a manner different from all others; ſince the Conſent with which he was crown'd was the moſt univer- *Innuendoes.* *Pag.* 3.

ſal that had been known in any Age, he ſays he is *content never to deſire a greater advantage, than to reduce an Adverſary to the Abſurdity of making no difference between a Title and no Title.*

Wherein I fear he vvounds himſelf, while he thinks to hit Mr. *Johnſon* in the Eye, for his due Application of the ſelf-evident Diſtinction between *Law*, and *no Law*: and tho there is no Law to reach Mr. *Johnſon* for his Reflections upon the late King and his Title; this Writer may find a Law to puniſh him. And if he would be at the pains to conſult our Records, Law-Books, and old Hiſtorians, he may find full warrant from the Conſtitution to make a good Title in our King, upon the Determination of the others, and ſuch a Conſent as God himſelf ſeem'd to direct, and appoint.

Yet ſince he ſuppoſes what is ſaid by Mr. *Johnſon* of the Reciprocal Contract between Prince and People, to be like his own Aſſertions, *a begging the Queſtion, or at leaſt an haughty Impoſition of his own Sentiments* without proof, but admits that *if this could be ſubſtantially prov'd, it would go a great way towards a Conviction of thoſe, whoſe Conſciences for want of Information IN THIS VERY POINT, will not give them leave to take the new Oath.*

Pag. 7. *The Reciprocal Contract.*

Ib.

I would entreat him to ſhew wherein I either falſify in the Authorities which I have formerly produc'd, and here repeat with Additions to this very Point, or make wrong Inferences from them.

Which till he does, as a due Correction for his railing at Mr. *Johnſon* (whoſe Memory will flouriſh in after-Ages, when he ſhall be no otherwiſe known than under the Character of his Reviler) I may ſay, that his refuſing to ſwear Allegiance to our legal Government, is Obſtinacy, and his diſtinguiſhing *Faith, Faction.*

And if he ſhould be call'd in Queſtion for that impotent Libel, and no other means of reducing him to Sobriety being

being effectual, ſhould, according to his ſnarling Reflection upon the immortal Memory of the Lord *Ruſſel*, and other inferior *Patriots*, be condemn'd to mount toward an *Apotheoſis*, for his *meritorious Crime of Treaſon*, againſt that Power which has been ordain'd of God the moſt apparently, of any Civil Government that has been known for at leaſt many Centuries; could he expect to be as much deſir'd, lamented, and praiſed, by all that are themſelves worthy of Praiſe?

Should he, as he went along, tell the good People, that he ſuffer'd for that Doctrine *which ſhall know no end, but when all things confeſs their Aſhes*, and that tho his *Sins are ſtrangely great*, yet he now pay'd his Head *forfeited* by the Letter of the Law, for Treaſon againſt a King which that acknowledges, where Mr. *Johnſon*'s is due, by a true equitable Conſtruction, for Treaſon againſt one who is no King in the Eye of the Law: would not Men be tempted to make the *Poet*'s Obſervation, upon ſuch a ſpruce and finical Malefactor? Pag. 6.

——————Crimina raſis
Librat in antithetis, doctas poſuiſſe figuras
Laudatur——————

" In ſmooth *Antitheſes* his Crimes he weighs,
" And his departing Figures force our Praiſe.

I well know, that Men are as zealous for a falſe Religion, and their own Superſtructure of Hay and Stubble, as for the true Foundation. And they who expoſe their Additions are in danger, if not of ſuffering as Hereticks, of being cenſur'd as Atheiſts.

And tho falſe Doctrines, like falſe Miracles, impare the Credit of the true; yet he that attacks them after they have ſpread, and gained the Name of ſacred, not only hazards himſelf, but while he untwines, or roots up the Weeds, may chance to ſhake ſome ſtanding Corn.

Which may excuſe the early freedom which I have taken, to prevent the ſpeading of that new *Law-Divinity* in this Age, which roſe in the laſt, upon the fall of good *Archbiſhop Abbot*, was rear'd up by *Biſhop Laud*'s Canons, upon which the Parliament which brought in *Car.* 2. put a ſufficient mark of Diſlike, and was fatned with the *Charters* of well-fed Corporations, and the *Blood* of its forwardeſt Oppoſers.

While I expoſe the Folly of ſome Mens Notions, which fight as much againſt our preſent *Settlement*, as againſt common Safety; and ſhew the Obligation which lies upon Kings to keep their *Compacts* with the People, I would not be thought to go about to looſen the Bond of due Subjection to the Powers vvhich are over us. I am ſure they vvho vvill acknowledg none but King *James* to be their *rightful* King, have no colour to urge this againſt me; and yet, by means of ſuch falſe Alarums, they have made moſt dangerous Approaches towards the Deſtruction of this Government.

I vvould not be thought to revive the powerful Hereditary Offices of the *Palatine of Cheſter*, the *High-Steward*, and the *Conſtable of England*; that Tribunitial Authority which they had, vvould be very dangerous in moſt times, and too great Incentives to ambitious Men to ſet up for themſelves.

Les ſoupirs de la France Eſclave. Mem. 9. p. 130.

The Author of the *Sighs of* France *enſlav'd*, obſerves, that *Charles Martel*, *Mair du Palais*, or *High-Steward*, made himſelf King of *France*, and *Pepin* his Son caus'd himſelf to be choſen, the Family of the *Merovingians* being rejected. That *Eudes*, *Mair du Palais*, upon the declining of the Houſe of *Charlemain*, took the Crown, and caus'd it to paſs to *Hugh Capet*, and that *Hugh Capet* and his Deſcendants wiſely ſuppreſs'd this Office.

It has doubtleſs been no leſs the Wiſdom of this Government, to have the like Offices with us to be now only known

known in Story; yet they, at leaſt, are Evidences of the Engliſh Liberties, nor are the Liberties the leſs, or the leſs inviolable, becauſe the Subjects of this *Monarchy* have had greater Confidence in their Kings, than to inſiſt upon having ſuch ſettled Officers; who may repreſent their Grievances with the better Authority, and unite them in the common Cauſe, when the oppreſs'd Nation ſhould want nothing but an *Head*, under which they might become formidable to *evil Miniſters*, who either think that the former Injuries which they have done, are too great to be forgotten, and therefore ſeek for Security in the Ruin of them who had before ſmarted under them; Or, who, next to ſetting up themſelves, have no other aim but to make way for their ſuppos'd King of Right.

Vid. *Les ſoupirs de la France Eſclave Mem.* 9. p. 142. *On doit recicillir, que quelque changement qui ſoit arrive dans le Gevernment a l'égard des noms, & des fonctions des Principaux Officiers, Mairs du Palais, Conneſtables, Chanceliers, Grande Cómbelloins, &c. a touts cetè ſans aucun préjudice des Proits du Peuple; les Officiers de la Cour, & don de la Couronne out en plus ou moins de pouvoir, mais c' eſt par rarpert au Royles Droits de la Nation ſont toû jours demeures en leur entier.*

Such Men pretend, that tho they cannot ſwear, or declare, that King *William* and Queen *Mary* are *Lawful* and *Rightful King* and *Queen*, yet they can act in the Service of them as King and Queen; and that there can be no danger from them, becauſe of the harmleſs *Doctrine of Paſſive Obedience*. *Prayers* and *Tears* alas! are all their Weapons, and with them they may ſollicit Heaven and Earth, pray to God to reſtore their Prince, who they ſay *for the Sins both of Prieſts and People is now kept out*; and encourage a Rebellion againſt him, who in their very Prayers to God Almighty they will have to be *no King*. I may add,

Vid. *The Form of Prayer and Humiliation, Ed.* An. 1690. *p.* 60. Pag. 39. *That we may no longer be without King, without Prieſt, without God in the World.*

Flectere ſi nequeant ſuperos, Acheronta movebunt.

" If neither Heav'n nor Earth afford them Aid,
" They'll try to fetch it from the *Stygian* Shade.

If ſuch things as theſe do not ſhew that there was occaſion, for my gathering together thoſe Precedents and Authorities, which evince, that in declaring for our preſent Soveraigns, the Nation has proceeded according to their Inherent Power, and in due form: I at leſt ſhall have the Satisfaction of having, in my Capacity, ſerv'd my Coun-

try, and, therein, I ſhall have more than my Labour for my Pains: which I may here cloſe with that of *Pliny* to his Friend *Tacitus*.

C. Pliny, *Ep. lib.* 9. *Poſteris an aliqua cura noſtri neſcio. Nos certè meremur ut ſit aliqua; non dico ingenio (id enim ſuperbum) ſed ſtudio, ſed labore; & reverentia poſterûm. Pergamus modò itinere inſtituto; quod ut paucos in lucem, famamq; provexit; ita multos è tenebris & ſilentio protulit.*

"I know not whether they that come after will have "any care of us; we ſurely deſerve from Poſterity ſome "Care and Eſteem; I do not ſay for Ingenuity (for that "would argue Pride) but for Study, and Labour. Let "us only go on in that way which we have enter'd upon; "which as it has rais'd ſome few Men to Splendor and "Fame; ſo it has drawn out many from Obſcurity and "Silence.

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Among other things.

SIR Robert Filmer, *and some of our Divines, plaid against one another, in relation to Eccceſiaſtical and Civil Power, and Sir* Robert *against Himself.* pag. 1.

Allegations in behalf of the High and Mighty Princeſs the Lady Mary, *now Queen of Scots, against the Opinions and Books in the Part and Favour of the Lady* Katherine, *and the reſt of the Iſſues of the French Queen, touching the Succeſſion of the Crown. Written in the time of Queen* Elizabeth.

Reflections on Biſhop Overal's *Convocation-Book.*

THE

THE Fundamental Conſtitution OF THE English Government, PROVING KING *WILLIAM* and QUEEN *MARY* our Lawful and Rightful *King* and *Queen.*

CHAP. I.

The Uniformity, tho unprofitableneſs, of Truth. *The Inſufficiency of falſe Mediums to defend this Government, us'd by Men who thereby ſeek only themſelves.* Quietiſm *in Allegiance advanced by ſome. The Suppoſition of a Conqueſt made by his preſent* Majeſty, *or his Succeſſion in the Line, no way for his Service. That* Lawyers *are the beſt Caſuiſts in this matter. Mr.* Leſſey's *Proteſtation when he took the Oath of Allegiance. Lord* Clarendon's *Complaint of* Divines *buſying themſelves in Matters of State. Mr.* Tirrel, *and the Author of two late Treatiſes about Government, ſet againſt Sir* Robert Filmer's *Authority. Dr.* Heylin's *Opinion of Sir* Robert. *The Judgment of* Hooker *touch'd upon concerning the Derivation of Power. The preſent Biſhop of* Worceſter's *Judgment.* Cragius *his. A large Account of the Derivation of Power from the People of* Rome *to their Emperors, brought to explain what our ancient Lawyers mean, when they receive the Roman* Lex Regia. *The Senſe of* Grotius, Plato, Conringius, Pufendorf, *of the Subject or Seat of Power. That all Empires, and other Civil Societies, muſt have been founded in Contract. A right to deſign the Perſon, if not to confer the Power admitted in the People by the greateſt Aſſerters of Monarchy. The Diſpute here chiefly of the Right to deſign the Perſon, what that is, referred to the Conſtitution. Allegiance to our preſent King and Queen undertaken to be prov'd lawful both by the Equity and Letter of our Fundamental Law, explain'd by the Practice of the Kingdom.*

HAving ſufficient Experience of the Conſequences of being always on the Forlorn Hope, tho in the nobleſt Cauſe, I ſhould yeild to the Juſtice of my Friend's kind Rebuke, for engaging in ſo many unprofitable Battels, wherein they who have raiſed neither Envy nor Provocation, are ſuffered to carry away the Prize by the Conſent of Friends, as well as Enemies: were it not that he who is mercenary, and fights for Pay or for Spoil can be no fit Votary to *Truth*, which may ſometimes be conſiſtent

with Mens Worldly Intereſt, rarely advances it, but can never vary with it: while they who court *Truth* for the Dowry are often driven to Inconſiſtences with her and themſelves, and muſt be content to ſerve themſelves of her thinneſt Diſguiſes. Which I take to be the caſe of them, who pretend to juſtify this Government upon any other bottom than that on which it really ſtands, and may flouriſh in ſpite of open Enemies, if it be duly arm'd againſt falſe Friends, who ground it upon their own Fictions and flattering Schemes, prepared in times with which they ſuited, and were but like the *Hypotheſes* of Philoſophers to anſwer the then preſent *Phænomena*.

Such Men valuing their own Reputation and Intereſt too much above the Publick, expoſe it to the Contempt of the more ſubtile *Adverſaries*, who cannot but ſmile to ſee *Quietiſm* prevail in Allegiance, as well as in Devotion; and them to pretend to diſcharge the Duty of Subjects, and to deſerve Protection from the Government, who not only make reſiſting the late King damnable, which implies a ſcrupling to defend that Government which protects them; but broadly inſinuate that no perſonal Aſſiſtance is due to keep the King and Queen in their Station, even tho they have ſworn Allegiance to them: which ſhews what is to be thought of ſome Mens Promiſe, *conſtantly to pay that Fidelity and Allegiance which they have all ſworn.* When the fit of *Quietiſm* is over, and the opportunity inviting, they may, in the ſenſe of ſome of the Brethren, with a ſafe Conſcience, fight for their King *de Jure*: Wherein it is evident that no Proviſion is made for the Safety of this Government, but only for ſecuring to themſelves their Places of Profit under it; yet no Man can believe, that the Law which requires the Oath of Allegiance, can give the leaſt ſcope for ſo groſs an Evaſion, ſo ſerviceable to that pretence of Title which it rejects.

Vid. *Conſiderations offered for taking the Oath of Allegiance, ſaid to be Dr.* Whitby's, *reflected upon in a Treatiſe call'd* The Charity and Loyalty of ſome of our Clergy.

Nor will the *Jacobites* be leſs thankful for their Doctrine, who not only condemn all thoſe, whoſe active Zeal help'd to turn the Scale againſt them, but allow no Title in our King, unleſs it be by a *real Conqueſt* of the Nation, or *legal Succeſſion* in the Line. The firſt of which the King not only diſowns, and the People would be loth to fight to maintain over themſelves, but, according to the Objection in *Elementa Politica*, would have required a formal Denunciation of War. And the laſt labours with ſuch Difficulties as few can be able to reſolve themſelves or others in.

Vid. *The Doctrine of Non-reſiſtance and Paſſive Obedience not concerning the Controverſy*, Vid. *the Preface.*

Vid. Elementa Politica.

But as I am verily perſwaded that our Government ſtands upon ſuch a Rock as has been unmov'd for many Ages, and has no need of a Lie for its Support; I ſhall with the utmoſt Faithfulneſs addreſs my ſelf to its Defence, wherein if I offend ſome of contrary Sentiments, I muſt entreat them to anſwer me like Men, with Reaſon and Authority, and not in thoſe Methods wherein they have hitherto been too ſucceſsful.

All the Oppoſers of our preſent Settlement, who pretend to talk Senſe, when preſs'd home, grant that the Conſtitution of the Engliſh Government muſt be the Guide to their Conſciences in this matter. And tho I cannot commend thoſe *Juſtices* of the Peace, who permitted a *Divine*, Eminent in his Country, and an Example to others, to read a Proteſtation before his taking the Oath of Allegiance to King *William* and Queen *Mary*, yet I ought not to reject his Teſtimony, that

Thomas Leſley *Rector of* Laurence Lyddeard *in* Somerſetſhire.

that *Lawyers* are *the beſt Directers of Conſcience* in this caſe. The words, according to a Copy of his written Paper now in my hand, tranſmitted from the Country, were theſe.

" I am aſſured by Learned Men in the Law, whom I have conſulted " as the *beſt Directers* of my Conſcience of this caſe, that by the Laws " of this Nation the *Allegiance* of the Subject is due to a *King in* " *Fact*, or in Poſſeſſion of the *Government*, provided they have been " recognized by the *three Eſtates* of the Kingdom in a *Publick Con-* " *vention.* I am fully convinced of the Truth of this: And this is *a* " *Reaſon* prevails with me to ſwear Allegiance to King *William* and " Queen *Mary*.

This was at laſt Chriſtmas Seſſions for the County, Sir Edward Philips being Chair-man.

The great Unhappineſs of this Nation is, that *Divines* not only ſet up for the greateſt *States-Men*, but will pretend to be the beſt Lawyers and Caſuiſts in theſe Points, of which the trueſt Friends to them and the *Church* have complained.

Thus the late Earl of *Clarendon* having in his excellent Book againſt Mr. *Hobbs*, tax'd ſome *Divines* of *malicious Endeavours* to render *Monarchy inſupportable, by the unlimited Affections, and Humours, and Pretences, and Power of a ſingle Perſon.* Says others of them, *believe as unreaſonably, that the Diſpoſition, Natures and Hearts of the People cannot be applied to the neceſſary Obedience towards their Princes, nor their Reverence and Duty be ſo well fix'd and devoted to them, as by thinking that* THET HAVE NOTHING OF THEIR OWN, *but whatever they enjoy they have only by the Bounty of the King, who can take it from them when he pleaſes.* Whatever ſuch Caſuiſts hold of the *abſolute* and *inſeparable Soveraignty* of *Princes*, if I prove that King *William* and Queen *Mary* are Rightful *King* and *Queen*, according to the ancient Conſtitution of the Engliſh Government; how much ſoever my Endeavours of real Service to the *Crown* may be miſrepreſented by Men of another Allegiance; I ſhall hope at leaſt to be thought to have ſerved my Country, too much infected with wrong Notions, or diſtracted with falſe *Mediums*; and to have done Juſtice to our *Great Deliverer*, and thoſe *Engliſh Worthies*, who invited or embraced the *Deliverance*, and by their ſteady adhering to the Intereſt of their Country, avoid that Forfeiture of Protection, which too many have incurred.

Lord Clarendon's *Survey of the* Leviathan, *p.* 75.

To which end I ſhall ſhew;

1. That the People of *England* had a rightful Power lodg'd with them for the Preſervation of the *Conſtitution*, in vertue of which they might declare King *William* and Queen *Mary* King and Queen of *England* and *Ireland* with all their Dependencies, tho *J.* 2. was alive at the time of ſuch Declaration.

2. That this rightful Power was duly exercis'd in the late Aſſembly of Lords and Commons, and afterwards regularly confirmed by the ſame Body in full Parliament.

1. As to the Nations rightful Power, I ſhall not go about to refute the fond Notion of an abſolute *Patriarchal* Power deſcending from *Adam* to our Kings in an unaccountable way; becauſe, tho if this were true, there could be no more Compact between Princes and their People, than is between Fathers and Children for eſtabliſhing the Rights

of Fatherhood, yet the difference between a *Patriarchal* and *Monarchical* Authority, is so well stated and prov'd by my Learned Friend Mr. *Tyrril*; that few besides the unknown *Author* of the two late *Treatises* of *Government*, could have gained Reputation after him, in exposing the false *Principles* and Foundation of Sir *Robert Filmer* and his Admirers; one of which Dr. *Heylyn*, in his Letter to Sir *Edward Filmer* the Son, speaking of his Father says,

Patriarcha non Monarcha, Ed. *An.* 1681.

Two Treatises of Government, In the former the false Principles and Foundation of Sir Robert Filmer *and his Followers are detected and overthrown*, Ed. Anno 1690.

" His eminent Abilities in these Political Disputes exemplified in his " judicious Observations on *Aristotle*'s Politicks, as also in some Passages " on *Grotius*, *Hunton*, *Hobbs* and other of our late Discoursers about " Forms of Government, declare abundantly how fit a Man he might " have been to have dealt in this Cause, which I would not willingly " should be betrayed by unskilful handling; and had he pleased to " have suffer'd his excellent Discourse called *Patriarcha* to appear in " publick, it would have given such Satisfaction to all our great Masters " in the Schools of *Polity*, that all other Tractates in that kind had " been found unnecessary. This he says might have serv'd for a *Catholicon, or general Answer to all Discourses of this kind.*

Heylyn's Certamen Epistolare, *p.* 386, 387.

Since Sir *Robert Filmer* and Dr. *Heylin* were our late *Observator's* Predecessors in guiding the *Inferior Clergy*, 'tis not to be expected that they should nicely enquire into the Errors and Contradictions of their Leaders; but the Doctor's scandalous Reflections upon the Reformation in *England*, and the Misfortunes of *Charles* the First, in some measure at least occasion'd by the Countenance given to *Sybthorpism*, *Manwarism*, and *Filmerism*, may justly raise a Prejudice against these Men and their Doctrines in the thinking Laity; and those who are not able to think of themselves, may take every Morning some Pages of the two *Treatises* of Government, for an effectual *Catholicon* against Nonsense and Absurdities; which have nothing to recommend them but Stile and Names cried up among a *Party*.

Wherefore I may well think that I may pass over the *Stumbling-Blocks* which such Men lay in the way to my Proof, that the Power whereby this Nation is govern'd, is originally under God derived from the People, and was never absolutely parted with.

Vid. Dr. Heylyn's *Stumbling-Block of Disobedience and Rebellion.*

Many have cited the Authority of the *Judicious Hooker* till it is thread-bare, to prove, that it is impossible there should be a lawful Kingly Power which is not mediately, or immediately, from the Consent of the People where 'tis exercised.

Hooker's *Ecclesiastical Polity*, lib. 1. f. 10.

The present Bishop of *Worcester*, whose Name will undoubtedly be held in no less esteem in future Ages, is as expres in his *Irenicum*.

Irenicum, *p.* 132.

" *That all civil Societies are founded upon* CONTRACTS *and* CO-" *VENANTS made between them, which, saith he, is evident* to any " that consider, that Men are not bound by the Law of Nature to " associate themselves with any but who they shall judg fit; That Do-" minion and Propriety were introduced by free Consent of Men; " and so there must be Laws and Bonds, fit Agreement made, and " Submission acknowledged to these Laws, else Men might plead " *their natural Right and Freedom* still, which would be destructive to " the very Nature of those Societies. When Men then did part with " their *natural Liberties*, two things were necessary in the *most expres* " *Terms* to be declared. 1. A *free* and *voluntary Consent to part with* " *so much of their natural Rights as was not consistent with the well-*

" *being*

" *being of Society.* 2. *A free Submiſſion to all ſuch Laws as ſhould* " *be agreed upon at their entrance into* Society, or afterwards as they " ſee Cauſe. But when Societies were already entered into, and " Children born under them, no ſuch *expreſs Conſent* was required " in them, being bound by virtue *of the Protection* which *they find* " *from Authority to ſubmit to it*, and an *implicit Conſent* is ſup- " pos'd in all ſuch as are *born under that Authority.*

The Account which the Learned *Cragius* gives of the firſt Inſtitution of Kingly Government, ſeems to deſerve not to be omitted.

Quum multa iracundè, multa libidinosè, multa avarè fierent, &c. Cragius de Feudis, *ſ.* 2. Vid. *The like account in Sir* Will. Temple's *admirable Treatiſe of Monarchy, among his Miſcellanies.*

" When many things were acted wrathfully, many things luſt- " fully, many things avariciouſly, the beſt Man of a Society was " choſen who might take Cognizance of the Offence or Injury, and " determine what was equal among Neighbours. Thus were *Judges* " conſtituted in every City for the ſake of diſtributing Juſtice: " Theſe were call'd *Kings*; for *Kings* at the beginning were no " more than Judges, having their Denomination from ruling. Each " preſided over his own City, that is, *adminiſtred Juſtice.* Hence " that multitude of Kings in *Holy Writ.*

So *Bracton* Rex à regendo non à regnando Jus dicebant.

To deſcend from generals to the *Romans* in particular, whoſe Emperors were ſuppos'd to have been the moſt abſolute, and that the Obedience to *Higher Powers* required in the *Goſpel*, is to be taken from the meaſures of Subjection due to them. Dr. *Hicks*, the great Maintainer of the Abſolute Power of *Monarchs*, takes a great deal of Pains to ſhew that the Empire was not Hereditary, and by Conſequence that their Power was immediately veſted in the particular Emperors by the Conſent of the *Legions*, or other People, who ſet them up.

Dr. Hicks his Jovian.

Saravia, as careful of the Rights of Princes, owns, " That by " the Roman Law the Crime of *Læſa Majeſtas*, or *Treaſon*, is de- " fin'd to be that which is committed againſt the People of *Rome*, " and its Security.

Saravia de Imp. Author. *ſ.* 159.

Where he confines it to Crimes againſt the People only, which indeed agrees with the dying Speech of an old Roman in *Tiberius* his time. Vid. Tacitus *p.*

But that in the Eye of our Law there may be a *Læſa Majeſtas*, or Treaſon againſt the People of *England*, is evident not only by *Glanvil*, who wrote in the time of *H.* 2. and *Fleta* of *Edw.* 1. but by two Statutes made in the time of *H.* 8. who was as jealous of the Rights of *Soveraignty* as any Prince before or after him.

Vid. *Glanv. p.* 1: Crimen quod in legibus dicitur crimen Læſæ Majeſtatis, ut de nece vel ſeditione Domini Regis vel Regni.

And is plainly enough ſuppos'd in the Statute 25. *Ed.* 3. which ſhews that there may be Treaſon againſt the Government as well as againſt the King, or any of the other Treaſons of which ordinary Judges are permitted to judg.

So Fleta de Crimine Læſæ Majeſtatis *c.* 21

But ſince this *Majeſty* of the People may have been given as well as reſerv'd or left, I ſhall not urge this as an undeniable Argument of the derivation of Power from them.

Vid. 26 *H.* 8. c. 2. 28 *H.* 8. *c.* 18. *Traitors againſt the King and Realm.*

Nor yet ſhall I tranſcribe the many Paſſages in *Forteſcue* proving ſuch Derivation, becauſe tho his Book is of great Authority in our Law, yet it was written in a *King*'s Reign which ſome may think to ſtand in need of ſuch a Juſtification.

Forteſcue f. 6. temp. H. 6.

Neither ſhall I here urge how far this Monarchy has been *Elective*, becauſe the particular Conſideration of that will follow, this I only obſerve of it here, that ſo far as the Monarchy ſhall prove to have been *Elective*, ſo far will it appear, that all Power not aſcertain'd by the Law of God contain'd in Scripture, or the Book of Nature, is mediately or immediately derived from the People.

But I think I may be able to ſhew from one of thoſe Paſſages which ſeem the moſt to imply the abſolute Authority of our Kings, that whatever it is, it was derived from the Conſent of the People, and that the Peoples Conſent is ſtill requiſite for the Exerciſe of an Abſolute Power, according to the memorable Speech of *H.* 8. in Parliament, where he thought himſelf to ſtand in his *higheſt Eſtate Royal.*

Crompt. *his Juriſdic. of Courts*, p. 60.

The *Civil* Law of the *Romans* ſays, *Quod Principi placuit Legis habet vigorem*, that which has pleaſed the Prince has the force of Law; but take this according to the Opinion of *Glanvil*, *Bracton*, *Fleta*, and ancient *Civilians* who wrote about *Bracton*'s time, who, as Mr. *Selden* informs us, wrote according to what they found in the Governments eſtabliſh'd throughout *Europe*, The *Principi placuit* was no more than the *Le Roy le veut* with us: The Civil Law ſhews, that whatever Authority the *Emperors* had, the ground of it was, that the People *in eum Imperium & Poteſtatem conferret*, conferr'd *Empire* and *Power* upon him, as *Odofred* a *Civilian* coeval with *Bracton* has it, tho the following Copies have it *omne ſuum*, as if the People conferr'd all their Power; This may ſignify no more than all that Power which the Emperors had, yet perhaps the other Senſe was intended, and may well be imputed to the Servility of later Times, eſpecially if we conſider not only what *Saravia* ſays, who beſides the *Majeſty of the People* above-mentioned out of him, tells us that the Roman *Emperors* acted under the Peoples Authority; which he proves, in that their Acquiſitions were in the Name of the People.

Glanvil's *Prologom.* Bracton, *lib.* 3. *c.* 9. Fleta *l.* 1. *c.* 19.

Selden ad Fletam, *f.* 469.

Saravia de Imp. Author. *f.* 278.

And even Biſhop *Sanderſon*, having approved of the reſtrain'd Senſe of the Roman *Lex Regia*, us'd by our ancient Lawyers, adds, "I do affirm, and it is the common receiv'd Opinion, that "the Laws propounded and inſtituted by a *Prince*, or *Head* of a "*Commonalty*, do not oblige Subjects, nor have the Power of a "Law, unleſs they be received by the Commonalty themſelves, "and are allowed by the Cuſtoms and Suffrages of thoſe that uſe "them. According to *Demoſthenes* the Law is πόλεως συνθήκη κοινή, "the common *Engagement* of a City. If peradventure his Au"thority be of leſs value, becauſe he lived in the Popular Common"wealth of the *Athenians*, will you be pleaſed to hear the great "Lawyer *Julius*, who lived when the Roman Emperors had the "fulneſs of Command, his words in his 32*d* Book *De Legibus*, are "theſe, *Ipſæ Leges nullâ aliâ ex causâ nos tenent; quàm quod judicio "Populi receptæ ſunt:* The Laws do oblige for no other cauſe than "that they are receiv'd by the *Judgment of the People.*

Sanderſon's *Lectures*, Ed. An. 1660. *p.* 149, 150, 151.

But if we obſerve how the *Roman Emperors* came by their Truſt from the People, and of what nature it was, this I take in relation to the Legiſlation to which our Lawyers apply the Civil Law, will appear to have been no more than the *Tribunitial* Authority: The *Tribunes* of the People choſen by them, were in their Name to de-

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liver their *placet* or Conſent to the *Emperor* or *Senate*; nor did the greateſt Emperors think it below them to court the Suffrages of the Populacy for this.

Before *Julius Cæſar* arriv'd to an Imperial Power, while the People of *Rome* govern'd all the Nations round about, in all Emergencies they conſulted *Deputies*, or Repreſentatives of the ſeveral *Provinces* under them, as appears in *Cicero*'s third Oration againſt *Catiline*, and after *Julius* even *Tiberius*, then whom no Man could be more intent, or more cunning to enſlave his Subjects, continued an Image of the ancient Uſage, by ſending the Demands of the *Provinces* to the Diſquiſition of the Senate.

Vid. Cic. in *Catil.* Orat. 3. ut Comperi *Legatos* Allobrog. belli tranſalpini & tumultus Gallici excitandi causâ à P. Lentulo ſollicitatos, *&c.* *Tacitus* Ed. Plant. *p.* 105. Tiberius vim Principatus ſibi firmans Imaginem antiquitatis Senatui præbebat poſtulata Provinciarum ad diſquiſitionem patrum mittendo.

But the People of *Rome* were trick'd out of their Liberty by that artful Emperor by his removing the *Comitia*, or Great Councils from the Fields, where the *Tribunes* took their Directions from the People, to the *Senate-Houſe*, where falſe Repreſentations of the Senſe of the People might be made behind their backs: they vented their Reſentments at this only in empty Murmurs, and as the Satyriſt has obſerved of them,

Tacitus in vitâ Tiberii Ed. Plant. p. 10. *Tum primum è campo comitia* ad patres tranſlata ſunt. Nam ad eam diem etſi potiſſima arbitrio Principis quædam tamen ſtudiis Tribunorum fiebant, neq; populus ademtum jus queſtus eſt niſi inani rumore.

——————*Qui dabat olim* Juv.
Imperium, faſces, legiones, omnia, nunc ſe
Continet, atq; duas tantùm res anxius optat
Panem & Circenſes.——————

"They who their Laws and Magiſtracy choſe,
"Quietly gave up all for Bread and Shows.

Yet upon obſerving the ſteps by which the Emperors advanced to their Power with the People, 'twill be evident, that it was but lodg'd as a Truſt and Confidence that they would truly act according to their Senſe and Intereſt, which before was to be faithfully repreſented by their *Tribunes*.

When *Lepidus* was to incite the People againſt *Sylla*, he found nothing more moving than to tell them, that the *Tribunitial Authority* would be overturned by him, he adds in Explanation of it, that he would have the Power and Judicature with him which did belong to the People, upon which he pathetically enlarges.

Oratio *Lepidi* Saluſtii op. Ed. Par. An. 1530. *p.* 134. Jus judiciumq; omnium rernm penes ſe quod populo Romano fuit.

"If theſe things are thought by you Peace and Concord, approve "of the greateſt Diſturbance and Deſtruction of the *Common-wealth*, "yield to *Laws impos'd upon you*, take Quiet with Servitude, and "tranſmit to Poſterity an Example of betraying the *Common-wealth* "at the price of ones own Blood.

It appears by *Saluſt*, that the great Power to which *Julius Cæſar* arrived was, by ſiding with the Populacy of *Rome*, whoſe Rights had been invaded by the Senate, 'twas his great Mind which he tells him, at the beginning, *diſturb'd the Faction of the Nobility*, and reſtored the Populacy of *Rome* to Liberty from grievous Slavery, and

Saluſt ad C. Cæſarem de Rep. Ordinandâ *p.* 147. Ingenium ille animus eſt qui jam à prin-

principio nobilitatis factionem diſturbavit, plebem Romanam *ex Gravi Servitute* in libertatem reſtituit, *p.* 145.

and he reckon'd that upon his ſetling Affairs after his Victory, *renovata plebs erit*, the *Plebeians* will be renewed, or have a new Life; accordingly he adviſes him to cultivate good Manners among tnem, and as *Saluſt* had expreſs'd himſelf to *Cæſar* a little before, *Magiſtratum Populo, non creditorem gerere, & magnitudinem animi in addendo non demendo Reip. oſtendere.* To ſhew himſelf a Magiſtrate, and not a Creditor to the People, and to evidence the Greatneſs of his Mind by adding to the *Common-wealth*, and not taking from it.

This may give ſome tolerable account how *Cæſar* came to be murder'd in the Senate-Houſe, and may raiſe his Character even above *Brutus*, who has paſs'd for the *Hero* of *Common-wealths*-Men.

Marcelli Donati Diſlucidationes Ed. An. 1605. *p.* 302. Præterea Cæſarum temporibus Patritios & Senatorios viros non modo Tribunatum appetiviſſe ſed illos Imperatores inquam Tribunos Plebis factos Tribunitiam poteſtatem occupaſſe manifeſtum eſt. Si quidem Julius Cæſar teſte Tacito per initia, *lib.* 1. Annal. Conſulem ferens & ad tuendam Plebem, Tribunitiâ Poteſtate contentus fuit. Et Auguſtus ex Appiano *l.* 5. perpetuus Plebis Tribunus à Romanis dilectus fuit. Et Suet. illum Tribunitiam Poteſtatem perpetuam recipiſſe ſcribit. Quod & Dion. in illius vitâ confirmat & Tacitus lib. Annal. 1. deſcribens Pompam funeris Auguſti, ait de illo, continuatâ per. 37. annos Tribunitia Poteſtate. Et lib. 3. de Tribunitiâ Poteſtate loquens, inquit: Id ſummum veſtigii vocabulum Auguſtus reperit, ne Regis aut Dictatoris nomen aſſumeret, *&c.*

Marcellus Donatus in his Comment upon *Tacitus*, puts it out of doubt that the chief Power which the Roman Emperors had was as *Tribunes* of the People; his Authorities for which are numerous; and that ſometimes they were entruſted with it for Years, ſometimes for Life, ſometimes the Conſent expreſs'd, ſometimes *tacit*, and implied, as it was aſſumed by the Emperors, and permitted by the People.

The Application therefore will be eaſy to any one who reads our ancient Lawyers, where they tranſcribe and comment upon the Roman *Lex Regia*. *Glanvil*, *Bracton*, and *Fleta* differ from one another in very few words, all to the ſame Senſe. The words of *Fleta* are theſe, ſpeaking of the King of *England*.

Fleta *lib.* 1. *c.* 17. *Et licet omnes potentiâ præcellat, cor tamen ipſius in manu Dei eſſe debet; & ne potentia ſua maneat irrefrænata, frænum imponat temperantiæ, & lora moderantiæ ne trahatur ad injuriam, qui nihil aliud poteſt in terrâ niſi id quod de jure poteſt. Nec obſtat quod dicitur, quod Principi placet legis habet poteſtatem, quia ſequitur cum lege Regiâ quæ de ejus Imperio lata eſt. Quod eſt, non quicquid de voluntate Regis tantoperè preſumptum eſt, ſed quod Magnatum ſuorum Conſilio Rege authoritate præſtante, & habitâ ſuper hoc deliberatione & tractatu rectè fuerit definitum.*

" And altho he excels all in Power, yet his Heart ought to be " in God's Hand, and leſt his Power ſhould remain unbridled, he " ought to apply the Bridle of Temperance, and the Reigns of " Moderation, leſt he be drawn to Injuſtice, who can do nothing " elſe whatever but that only which he may do by Right. Nor " is it an Objection that it is ſaid, that which pleaſes the *Prince* has " the force of Law, becauſe it follows, ſince [by the Law of the " King which was made concerning his Power] —— as ſome " render it (with the Law of the King) as others. That is to ſay, " not whatever is only preſumed of the King's Will, but that which " ſhall be in due manner determined [by the Counſel of his Great " Men the King giving them Authority thereto] which ſeems to " relate

Vid. Seldens Diſſert. ad Fletam, *f.* 467.

" relate to the *King's Counſel* in *Parliament* advis'd with in draw-
ing Bills, in Points of Law, and the like, " *there being had upon it a*
" *Deliberation and Treaty.*

Vid. Conring. *p.* 11. in verbis Taciti. De minoribus rebus Principes conſultant de majoribus omnes; ita tamen ut ea quoq; quorum penes plebem arbitrium eſt, apud Principes pertractentur; ubi tamen cum Hugone Grotio ſummo ſane viro legendum forte prætractentur.

Since in this our Lawyers receive the Civil Law, and give the ſame reaſon for the Royal Power which the Roman Law does, that it was conferr'd by the People, it being contain'd in the *Lex Regia*; what I have ſhewn to prove that the *Roman Emperors* deriv'd their Power from the People of *Rome*, equally ſhews that our Lawyers, beſides what they ſay of *Elections* of our Kings, believ'd that the Royal Authority here came from the People of *England*.

I need not therefore ſcruple to affirm, that our Law agrees with (*a*) *Grotius*, who holds that the *Civitas* is the common Subject of Power: This in the moſt reſtrained Senſe is meant of People of Legal Intereſts in the Government; yet if they are intitled to any ſort of Magiſtracy they become part of his *ſubjectum proprium*, the proper or particular Seat of Power, which is narrower than the *Civitas*: and therefore I take *Plato's* (*c*) πολίτης and (*d*) *Conringius* his *Cives* to be too reſtrain'd, the firſt limiting it to them that have ſhares in the Judicature and Magiſtracy; the other to the *States* and *Orders* of the Empire, allowing no others to be more than Inhabitants or Strangers: Whereas the *Civitas* muſt manifeſtly reach to that diffus'd Body, who are either capable of being part of the *Ordines* or *Great Council*, or of being repreſented in it; for otherwiſe, the common ſubject of Power muſt needs fail as often as there are Intermiſſions of the *States*, or Great Council. And 'tis plain that *Conringius* his Reaſon why none but the *Status vel Ordines Imperii* are more than Inhabitants, reaches farther. " Every " *Civis*, he ſays, is a Companion of the Civil Society; and it is the " part of a Companion to give his Suffrage and Judgment of " things belonging to the Society.

(*a*) Grotius de Jure Belli & Pacis, *l.* 3. *p.* 52. ſummæ Poteſtatis ſubjectum commune eſt Civitas. *So where the Statute ſays, the People of the Counties ſhall chuſe the Sheriff, this is limited to Freeholders*, vid. 2. Inſt. *upon the Statute.*

(*c*) Schelius de jure Imperii, *p.* 32. Plato πολίτην κάπηλῶς definit eum qui judiciorum particeps ſit.

(*d*) Hermanni Conringii Exercitationes Acad. de Civibus Imperii, *p.* 3. Ordines Imperii Incolæ.

This certainly he does virtually who gives his Suffrage in the choice of them who conclude the reſt; and if this ſhould not make a Citizen, there could be no means of exerting any moral or lawful Power in any Society, upon the determination of the Authority of thoſe particular Perſons who had conſtituted any diſſolv'd Aſſembly of *States*: unleſs the ſole Power reſided entirely and abſolutely in the Perſon or Perſons with whom they had lodg'd a Truſt for ſummoning them together, that is, giving publick notice of the Time and Place for meeting.

Indeed, if none but the *Ordines* were part of the *Civitas*, *Grotius* his Diſtinction between the common and proper or particular Seat of Power would be very vain: wherefore I take his *Cives* to be the ſame with *Pufendorf's Quorum coitione & conſenſu primò Civitas coaluit, aut qui in illorum locum ſucceſſerunt, nempe Patres familiâs.* " By whoſe Conjunction and Conſent the Civil Society firſt came " together, or they who ſucceeded into their rooms, to wit, the " Maſters of Families.

Sam. Pufendorf, de officio Hominis & Civis, *p.* 265.

Indeed if we conſider, it will appear, that never any Empire or other Civil Society was founded, but there was an Original

Contract or Agreement among the People for the founding of it. How was the moſt abſolute Authority of a ſingle Perſon ever rais'd or maintain'd but by the undiſciplin'd Rabble, or diſciplin'd one of an Army? and what could keep them together but a Contract or Promiſe of Pay or Spoil to the Leaders or Officers, who were to be undertakers to the common People, or the Souldiers? I remember Mr. *Hobbs* in his Hiſtory of the Civil Wars of *England*, blames King *Charles* the Firſt for engaging in a War againſt the *Parliament*, while at the ſame time he pretended to juſtify what he did by Law, and to leave all that that aſſiſted him to anſwer to the Law; when he ſhould have encouraged them to have been hearty on his ſide by hopes of the Spoil of the Nation: but whatever may be the Inducements to fight for an Authority lawfully eſtabliſh'd before, ſurely no People ever ſubmitted to any without a prior Obligation, but where they had hopes or expectations of Advantage or Eaſe, the obtaining of which, if not made a Condition, was ever implied.

Hobbs *his Hiſtory of the Civil Wars.*

Suppoſe a Colony of ſome hundreds of Men, among which one is choſen General, Head, or Leader, without any particular or expreſs Contract, and his Son ſuffered to ſucceed after him: Is the Power either of Father or Son, antecedent or obligatory, before the free Conſent of the reſt has paſt? Or, is it to be imagined that either the Father or his Succeſſor have this People as an Inheritance given them from above, to diſpoſe of their Lives and Fortunes without any regard to the Good of All?

The moſt ſenſible of them, who utterly deny that any Power can be derived from the People, as fighting againſt their fancied Divine Right of *Kingſhip* own, that the People have a Right to *deſign the Perſon*, tho not to confer the Power: only theſe Men will have it, that the extent of the Power of a King is aſcertained by *God* himſelf; which I muſt needs ſay, I could never yet find prov'd with any colour. But to avoid a Diſpute needleſs here, ſince the Queſtion is not ſo much of the Extent of Power, as of the Choice of Perſons, or Derivation of it; Whether any Choice is allowable for us, muſt be determined by the fundamental or ſubſequent Contract, either voluntary, or impos'd by Conqueſt; and 'tis this which muſt reſolve us, whether the Government ſhall continue *Elective, or Hereditary* to them that ſtand next in the courſe of Nature, guided to a certain Channel by the common Law of Deſcents; or limited only to the Blood, with a Liberty in the People to prefer which they think moſt convenient, all Circumſtances conſidered.

Vid. Sacroſanct. Regum Majeſt.

Poteſtas deſignativa perſonæ vel collativa Poteſtatis.

And if our Conſtitution warrants the laſt, then we may cut the Gordian Knot, and never trouble our ſelves with Difficulties about a *Demiſe*, or *Ceſſion*, from the Government or *Abdication* of it; for which way ſoever the Throne is free from the laſt Poſſeſſor, the People will be at Liberty to ſet up the moſt deſerving of the Family, or whom they judg ſo; unleſs there be ſubſequent Limitations by a Contract yet in force between Prince and People, which being diſſolv'd, no Agreements take place but ſuch as are or have been made among themſelves. In which Caſe, whatever ordinary Rule they have ſet themſelves, they may alter it upon weighty Conſiderations. And that the People of *England* have lawfully and rightfully renounc'd their Allegi-

Vid. *infra cap.*

Allegiance ſworn to *J.* 2. and transferr'd it to the moſt deſerving of the Blood, notwithſtanding any Oaths or Recognitions taken or made by them, I ſhall evince, not only from the *Equity* of the Law, and Reſervations neceſſarily implied in their Submiſſion to a King; but from the very Letter, explain'd by the Practice of the Kingdom, both before the reputed Conqueſt, and ſince.

CHAP. II.

Of Equity, or implied Reſervations. Who judges of the Equity. The Lord Clarendon's *Judgment of ſuch Caſes.* Cocceius *his. A ſhort Reference to three late Treatiſes of great uſe upon this Queſtion. Some Reſervations which Bp* Sanderſon *will have implied in all Oaths.* Grotius *his Opinion and Quotations out of* Barclay *in relation to the withdrawing the Allegiance which had been due to Kings. Even the Author of* Jovian *of ſome Service here. Mr.* Falkner's *Chriſtian Loyalty ſet in a true Light, and ſhewn, notwithſtanding his being miſled by the Canons of* J. 1. *and of* 1640. *to be wholly on our ſide, in what relates to our preſent Enquiry, and to joyn with* Grotius, Barclay, *Bp* Bilſon, Leſſius, *and* Becanus. *So Bp* Bedell, *tho a Cloud has been endeavoured to be drawn over his Opinion. Mr.* Lawſon's *Opinion. Bp* Bilſon's, *whoſe Authority is confirm'd by the Objection made to it in the Hiſtory of* Paſſive Obedience. *To which is added the Divine* Plato.

FOR the Equity and reſerv'd Caſes, I think it appears in the nature of the thing, that they for whoſe benefit the Reſervation is; muſt be the Judges, as in all Caſes of Neceſſity he who is warranted by the Neceſſity, muſt judg for himſelf before he acts; tho whether he acts according to that Warrant or no, may be referr'd to an higher *Examen:* But where the laſt Reſort is, there muſt be the Judgment, which of neceſſary Conſequence in theſe Caſes muſt needs be in the *People*, the Queſtion being of the Exerciſe of their *Original* Power; and where they have by a general Concurrence paſt the final Sentence, in this caſe their Voice is as the Voice of *God*, and ought to be ſubmitted to.

The late Earl of *Clarendon*, ſpeaking even of a *Contract wherein the abſolute Power of a Man's Life* is ſuppoſed to be *ſubmitted*, ſays, *Survey of the* Leviathan, *p.* 86.

"He was not bound by the Command of his Soveraign to exe-
"cute any dangerous or diſhonourable Offices; but *in ſuch caſes Men*
"*are not to reſort ſo much to the Words of the Submiſſion as to the In-*
"*tention:* which Diſtinction he will have *applicable to all that mon-*
"*ſtrous Power* which Mr. *Hobbs* gives his Governour, to take away
"*the Lives and Eſtates of his Subjects, without any Cauſe or Reaſon,*
"*upon an imaginary Contract, which if never ſo real, can never be ſup-*
"*poſed to be with the Intention of the Contractors in ſuch Caſes.*

* *Cocceius* holds the fundamental Laws of any Kingdom or Empire to be, not only thoſe for which there has been an expreſs Contract with a Prince before, or upon his aſſuming the Government, but ſuch alſo

* Cocceius de Principe *p.* 197. Leges fundamentales Regni vel Imperii quæ vel diſertè pactæ ſunt cum Principe antequam imperium ineat, *&c.*

alſo as ſeem *tacitè ineſſe rei publicæ* "to be implied as belonging to "every Community or Civil Society.

For the direction of Mens Judgments in ſuch Caſes, they need not conſult voluminous Authors, but may receive ſufficient Light from thoſe excellent Papers; *The Enquiry into the preſent State of Affairs*; *The Grounds and Meaſures of Submiſſion*; and, *The brief Juſtification of the Prince of* Orange's *Deſcent into* England, *and of the Kingdom's late Recourſe to Arms.*

Which I ſhall here only confirm by ſome Authorities.

The firſt, as being of moſt Credit among them who raiſe the greateſt Duſt, ſhall be Biſhop *Sanderſon*, *Of the Obligation of an Oath*; who ſhews ſeveral Exceptions or Conditions, which of Common Right are to be underſtood before an Oath can oblige; in which I ſhall not confine my ſelf to the Order in which he places them.

Sanderſon de Juramenti obligatione, *p.* 41.

1. "*If God permit:* becauſe all things are ſubject to the Divine "Providence and Will. Nor is it in any Man's Power to provide "againſt future Accidents: Wherefore he who did what lay in him "to perform what he promis'd, has diſcharg'd his Oath.

2. "*Things remaining as they now are:* Whence he who ſwore to "marry any Woman, is not oblig'd, if he diſcovers that ſhe is with "Child by another.

Theſe two Exceptions ſufficiently warrant Submiſſion to ſuch Government as God in his Providence ſhall permit, notwithſtanding Oaths to a former King: And if he ceaſe to treat his People as Subjects, the Obligation which was to a *Legal King* determines, before his actual withdrawing from the Government.

3. "*As far as we may:* as if one ſwear indefinitely to obſerve all "the Statutes and Cuſtoms of any Community, he is not oblig'd "to obſerve them farther than they are lawful and honeſt.

4. "*Saving the Power of a Superior:* Whence if a Son in his Father's "Family ſwear to do a thing lawful in it ſelf, but the Father not "knowing it, commands another thing, which hinders the do-"ing that which is ſworn; he is not bound by his Oath, becauſe by "the Divine Natural Law he is bound to obey his Father. And he "who has ſworn not to go out of his Houſe, being cited to appear "before a lawful Judg, is bound to go out, notwithſtanding his "Oath; the Reaſon is, becauſe the Act of one ought not to pre-"judice the Right of another.

Theſe two laſt Inſtances, added to the Conſideration of a *Legal* King, will qualify the Oath declaring it *not lawful, upon any pretence whatſoever, to take Arms againſt the King*; *and abhorring the Traiterous Poſition, of taking Arms by his Authority againſt his Perſon, or againſt thoſe that are commiſſioned by him.*

Vid. Stat. 13. car. 2. c. 1.

This I think I may ſay, with warrant from Biſhop *Sanderſon*, That no Man is bound by this Oath to act againſt Law, under colour of the King's Commiſſion; nor to permit ſuch Actions, if it be in his Power to hinder them; the common Fundamental Law being in this Caſe the Superior, which he is to obey, and which is to explain and limit the Senſe of Acts of Parliament ſeeming to the contrary.

Vid. infra, *p.*

Vid. *Grounds and Meaſures of Submiſſion.* Salus Populi ſuprema Lex.

To

To Biſhop *Sanderſon*, I may add *Grotius*, who runs the Prerogative of Kings as far as any Man in reaſon can: Yet he allows of reſerved Caſes, in which Allegiance may be withdrawn, tho there is no expreſs Letter of Law for it: As, Vid. Johannis à Felde Annotata ad Grot. *c.* 3, & 4.

1. "Where the People being yet free, command their future "*King by way of continuing Precept.* Whether there be any ſuch with us, can be no doubt to them who read the Coronation Oaths, from time to time required and taken upon Elections of ſome Kings, and the receiving others, by reaſon of *prior* Elections, and Stipulations with their Predeceſſors. Grot. de jure Belli & Pacis, *c.* 3. *p.* 60. Vid. Puſendorf Elementa Juris prud. *p.* 256. Nemo alteri poteſt quid efficaciter injungere per modum præcepti in quem nihil poteſtatis legitimæ habet.

2. If a King has *abdicated* or abandon'd his Authority, or manifeſtly holds it as derelict, indeed, he ſays, he is not to be thought to have done this, who only manages his Affairs negligently. But ſurely no Man can think but the Power of *J.* 2. is direlict. Grot. *c.* 4. *p.* 86. habet pro derelicto.

And he cites three Caſes, wherein even *Barclay*, the moſt zealous Aſſerter of Kingly Power, allows Reſervations to the People.

1. If the King treats his People with outragious Cruelty.

2. If with an hoſtile Mind he ſeek the Deſtruction of his People.

3. *If he alien his Kingdom.* This *Grotius* denies to have any effect, and therefore will not admit among the reſerved Caſes: But if no Act which is ineffectual in Law, will juſtify the withdrawing Allegiance, then none of the Inſtances will hold; for to that purpoſe they are equally ineffectual: Yet who doubts, but the King doing what in him lies to alien his Kingdom, gives pretence for Foreign Uſurpations, as King *John* did to the Pope's? And whoever goes to reſtore the Authority of the See of *Rome* here, be it only in Spirituals, endeavours to put the Kingdom under another Head than what our Laws eſtabliſh, and to that purpoſe aliens the Dominion. Nor can it be any great Queſtion, but the aliening any Kingdom or Country, part of the Dominion of *England*, will fall under the ſame Conſideration; which will bring the Caſe of *Ireland* up to this, where the Proteſtants had been diſarm'd, and the Power which was arm'd for the Protection of the *Engliſh* there, put into the Hands of the Native Papiſts; nor is it now likely to be reſtor'd to its Settlement at home, or dependance upon *England*, without vaſt Expence of Blood and Treaſure. Vid. Mat. Par. Addit. *f.* 281. *The King of* France *his Attorny General ſpeaking of King* John's *reſigning his Crown to the Pope.* Etſi dare non potuit, potuit tamen dimittere. Vid. Bellarm. *how the Pope hooks in Temporals* in ordine ad Spiritualia. Vid. Leges S. *Edwardi.*

Even the Author of *Jovian* owns, that the King's Law is his moſt *Authoritative Command*; and he denies that the *Roman Emperor had any Right to enſlave the whole People, by altering the Conſtitution of the* Roman *Government, from a Civil into a Tyrannical Dominion*; *or from a Government where the People had Liberty and Property, into ſuch a Government as the* Perſian *was, and the* Turkiſh *now is*, &c. *Dr.* Hick's *his* Jovian, *p.* 280. Ib. *p.* 192, 193.

No *Clergy-man* of the laſt or foregoing *Reign* having treated of Civil Government with more Temper and Judgment, and yet with greater Applauſe of the warmeſt Men of his own Gown, than the Learned Mr. *Falkner* of *Lyn*; I ſhall be the longer in giving an account of his *Diſcourſe* of *Chriſtian Loyalty*, which will prove an Authority on my ſide, beyond what could be hop'd for, conſidering the time when his Book came out with Licenſe, and a Dedication to the *Archbiſhop* of *Canterbury*: it being when Mr. *Johnſon*, by way of Compoſition againſt a threatned Suſpenſion, was oblig'd to Falkner's *Chriſtian Loyalty*, Ed. An. 1679.

drink his Coffee at home, leſt he ſhould inlighten his Brethren, who fill'd all places of publick Reſort with their Pulpit-Law, and the Dictates of their Guide Sir *Roger*. I muſt own that Mr. *Falkner* was in ſome things carried away with that Tide, which if any of that Cloth beſides Mr. *Johnſon* had the Courage to ſtemm, they had at leaſt the good fortune to be leſs obſerv'd; but the ſhewing wherein the Author of *Chriſtian Loyalty* gave too much way to the Faſhion, or the Noiſe, may yield farther ſtrength and light to that Truth, which will ariſe out of thoſe very Clouds, with which he might think requiſite to obſcure it.

His Treatiſe is in two Parts, in the firſt he vindicates and endeavours to explain the Oath of Supremacy.

1. In relation to the Regal Power, as it is receiv'd in our Church, or at leaſt by Church-men, or as it is acknowledged by our Laws.

2. As the Oath renounces all Foreign Juriſdiction, the laſt of which falls no otherwiſe under Conſideration here, than as it ſhews the King's Duty to preſerve his Eccleſiaſtical, as well as Civil Supremacy, and not to alienate either.

In the ſecond part this Worthy Author conſiders *the publick Declarations againſt Subjects taking Arms.*

Page 14. 1. In the firſt he rightly affirms, That *the aſſerting the Supremacy of Governnent is never deſign'd* (meaning I ſuppoſe, by the Law) *in any wiſe to violate either Divine or Chriſtian Inſtitutions, or to aſſert it lawful for any Prince to invade that Authority and Right, which is made particular thereby, whether in Matters Temporal or Spiritual.* Page 3. Where by *Chriſtian Inſtitutions*, 'tis plain that we are to underſtand the Eccleſiaſtical and Civil Laws of Chriſtian States, or the Laws of others not contrary to Chriſtianity; and thus he deſervedly blames them *who nouriſh falſe Conceptions, and miſtaken Opinions concerning the CIVIL POWER, beyond due Bounds exalting it ſo high, as not to reſerve that Reſpect which belongeth to God and Chriſtian Inſtitutions*; and rightly obſerves, that the *Supremacy does not exclude the Subject from a real Propriety in his own Eſtate.* And that *there are ſome Kingdoms where without any Diſparagement to the Supremacy of their Prince, they are govern'd by the fixed Rules of the Civil Law; and others where other Laws eſtabliſhed by their Predeceſſors are ſtanding Rules.*

Page 15. Page 11.

Page 391. And particularly in relation to the People of this Realm, he ſays in the ſecond Part, *The Engliſh Conſtitution doth excellently and effectually provide againſt injurious Oppreſſions.* Of which more in its place.

However I cannot but here obſerve, that even the Canons of 1640. which he receives as ſpeaking the Senſe of the Church of *England*, own that the Subject has a *Propriety*, but withal ſay, that *Tribute, Cuſtom, and Aid, and all manner of neceſſary Support and Supply are due to Kings from their Subjects by the Law of God, Nature and Nations; yet tho it is the Duty of Subjects to ſupply the King, it is part of the Kingly Office to ſupport his Subjects in the Propriety and Freedom of their Eſtates.* Still, it ſeems, ſubject to the *King*'s Judgment of neceſſity, which is right *Sibthorpiſm* and *Manwariniſm*, afterwards eccho'd to by the Courts at *Weſtminſter*, in the Reſolution about *Shipmoney*, and of late in that of the Diſpenſing Power.

1 Canon An. 1640.

I think in two things what Mr. *Falkner* writes upon the firſt Head lies open to Exception.

1. That generally by *Civil Power*, he ſeems to mean the Perſon of the *King*, and that not according to his own Definition of a *King*, which he ſays *doth denote the Royal Perſon who governs*, which himſelf owns to be according to the reſpective Limitations in thoſe places where they govern, many having *the Title of a King, who had not ſuch Royal Power as is allowed by our Conſtitution:* but he aſcribes to a King generally ſpeaking, and particularly to ours, ſuch a Soveraignty as carries with it the abſolute and arbitrary Exerciſe of that *Civil Power* whereby a Nation is govern'd. Page 356. Page 339.

Thus he aſſerts with St. *Auſtin*, That *Subjects may and ought to obey their Prince's Commands where they are certain, that what he commands is not againſt the Command of God:* And hence he attributes to the Kings of *England* even more Power than he allows to the Roman Chriſtian *Emperors*, as will ſoon appear. And it appears, that this is not only a caſual daſh with his Pen; for having before in one place ſpoken of *the buſineſs* of the *Civil Power* deſcrib'd by St. *Peter*, in another he mentions *the Authority with which he ſuppoſes Kings and Princes to be veſted to govern in Matters of Religion, not as originally ariſing from their Chriſtianity, but from the general Right of Dominion and Soveraignty, and ſays, this includeth a Right of eſtabliſhing, by their Authority, what is truly unblameable, orderly, uſeful, and neceſſary with reſpect to Religion.* Page 302. Page 123. Page 131.

Accordingly he ſpeaks of the Eccleſiaſtical Laws of *Ina*, and ſeveral other *Engliſh Saxon Kings*; as if they were eſtabliſh'd by them, as having the *Civil Power* ſolely and abſolutely in themſelves. Page 153.

And indeed if, as Mr. *Falkner* has it elſewhere, *the Soveraign Ruler hath a Right to promote God's Publick Worſhip, and to eſtabliſh it by a Civil Sanction*; it muſt follow either that theſe Kings were no Soveraigns, or that they alone made thoſe Eccleſiaſtical Laws, giving them their *Civil Sanction.* Page 41.

Yet that he denies even to the *Emperor Conſtantine* ſuch a Power as he aſcribeth to *Kings* and *Princes*, and particularly to ours, is evident from his juſtifying *Athanaſius* in his diſobeying the Emperor's poſitive Command to reſtore *Arius* to his Church of *Alexandria*, after a final Sentence of Deprivation of the Council of *Nice*; which Sentence being grounded upon his Hereſy, the *Emperor* might well think that ſubſcribing and ſwearing to the *Nicene Creed*, might render him a Perſon equally capable with any other, to ſupply the Vacancy. Pag. 172, 173, 174.

2. Another Miſtake Mr. *Falkner* ſeems to have been led into by thinking Eccleſiaſtical *Canons* to be of Authority in Points of Law or State. *Mr.* Falkner's *ſecond Miſtake in his firſt Part.*

Hence it is that he cites the ſecond Canon 1 *J.* 1. which he ſays *threatens Excommunication* againſt them who ſhall affirm, *that the King hath not the ſame Authority in Caſes Eccleſiaſtical, that the Godly Kings had among the Jews.* 2 *Canon*, Vid. *Chriſtian Loyalty*, p. 50, 51.

He might have obſerv'd that it excommunicates them *ipſo facto* without admitting them to any Plea or Defence for themſelves. In which Compariſon, tho perhaps much was intended, according to

the *Mos Regius* deſcribed by *Samuel*; I fear it proves too little, nor would they who made thoſe *Canons* have been willing to confine the Royal Power to that fundamental Law for it, which we find in *Deuteronomy*; where the Rule for the *Election* of Kings is ſtated, that the Perſon whom *they ſet over them* ſhould be *no Stranger*, but one from among *their Brethren*, and his Power is bounded within *Moſes* his Law, *that his Heart be not lifted up above his Brethren.*

Deut. 17. *from* ver. 14. *to the end.*

And it is certain that the Stream of Learned Men are on the ſide of *Petrus de Marca*, who obſerves, *that they do not deſerve well at the Hands of Chriſtian Princes, who would meaſure their Authority and Dignity from the Exerciſe of Royal Power under the Times of the Old Teſtament.* But leaving Mr. *Falkner* with his *Canons* to fight this out with *De Marca*, *Selden*, *Grotius*, *Schickard*, *Bellarmine*, *Baronius*, the greateſt part of the *Jewiſh Rabinnical* Writers, *Blondel*, and even *Joſephus*, who ſays *the King was not to act without the High Prieſt, and the Conſent of the Senators*; I ſhall but mention ſome Heads in which it will be difficult to diſprove me.

Falkner, *p.* 89.

Ib. *p.* 75.

Even Grotius *will not allow the Government over the Houſe of* Iſrael *to have been Monarchical.*

Ib. *p.* 102, 454.

1. The Kings of *Iſrael*; *quatenus* Kings, had no Intereſt in the Legiſlative Power; for that Government ſo far continued *a Theocraſy*, that God, who promiſed in an eſpecial manner to *dwell among them*, was their ſole *Legiſlator*; and Mr. *Falkner* himſelf tells us, *The Jewiſh Common-wealth was peculiarly order'd by God*, or as he has it elſewhere, *peculiarly Theocratical.*

Exod. 29. 45.

Page 464.

Page 438.

2. Where-ever any Alteration in the outward Adminiſtration, or Circumſtances of things appointed by *God's Law*, delivered by *Moſes*, went under the Name of any *King*; it will hardly be poſſible to prove that the *King* did not make it, either as he himſelf was a *Prophet*, or by the Direction of the chief *Prophet*, or *Seer*; whoſe Commiſſion, if we may judg by that of *Jeremiah*'s, was very large, being *ſet over the Nations, and over the Kingdoms, to root out, and to pull down, and to build and to plant.*

Jer. 1. 10.

The preſent Biſhop of *Worceſter* ſhews, that God appointed a Succeſſion of *Prophets* to make known his Mind to the *Iſraelites*; and that there were *Schools or Colledges of the Prophets*, which ſome think *Samuel* erected, where God Almighty ordinarily diſpenſed his Effuſions. Out of theſe the Kings had their *Seers*, *Gad* was *David's Seer*, and *Jeduthun Joſiah's*, after *Iſrael* and *Judah* were divided; according to that Obſervation made by the Biſhop, *neither were theſe Schools of the Prophets only in* Iſrael, *but in* Judah *likewiſe was God known.*

Orig. ſacræ, *p.* 150.

Pag. 154, 164.

Page 463.

3. The Right of the Crown of *Iſrael* was not ſo fix'd to a Family, but, as Mr. *Falkner* owns, *God reſerv'd to himſelf the Right of diſpoſing the Soveraignty of that Kingdom.*

By which, as he would juſtify ſome Riſings againſt Kings in Poſſeſſion, he muſt likewiſe admit, that no Inſtances of Paſſive Obedience among the Jews, can concern Governments more truly of Human Inſtitution.

4. For

4. For the Judicial Power, it may be difficult to ſhew the King to have been more than the Head of the *Sanhedrim*; and perhaps conſidering that the Law by which they were to judg was God's Law, which the *Prieſts*, who *bare the Ark of the Covenant of the Lord*, were to read to the People; the *High Prieſt* who was to bear *the Judgment of the Children of* Iſrael *upon his Heart continually*, with his *Urim* and *Thummim*, *the Breaſt-Plate of Judgment*, may bid fair for the chief Place in that Court. Deut. 31. 9, 11. Exod. 28. 29, 30.

And tho *Moſes*, their King, reſerv'd to himſelf an Appeal from the *Sanhedrim*, it will be difficult to ſhew that the *Seer* did not ſucceed him in that; eſpecially ſince he ſhews that his Right of being *hearkened to*, or obey'd, was as he was a *Prophet*: and the preſent Biſhop of *Worceſter* holds that the Promiſe of a *Prophet* to be rais'd up to the People of *Iſrael*, ought to be underſtood not only of Chriſt, but alſo and *more immediately*, of an Order or Succeſſion of Prophets to be obey'd in all things. Deut. 1. 17. Vid. Dr. *Heylin's* Certamen Epiſtolare, p. 290. *Forteſcue*, c. 1. p. 4. *b.* Moſes *call'd* Dux Synagogæ. Orig. ſacr. p. 150.

5. Whereas Mr. *Falkner* labours againſt *Joſephus*, *Maimonides*, and *Schickard*, to ſhew that the Kings of *Iſrael* might make *Arbitrary War*, or *War of choice*, without the Authority of the *Sanhedrim*: he ſhould have added [or the Directions or allowance of any *Prophet*] to have prov'd any thing to his purpoſe: and it will appear that the two Inſtances which he gives, were from the Prophetical Power; thus when he ſays *Saul reſolv'd upon War againſt the* Ammonites, *upon his preſent hearing the Cauſe of the Men of* Jabiſh Gilead; The Text ſays, *The Spirit of God came upon* Saul. Falkner, p. 97. 1 Sam. 11. 6.

And tho wicked *Ahab* would have engag'd *Jehoſaphet* the King of *Judah*, who was with him out of his own Country, in a War againſt *Syria*, without conſulting the Order of Prophets in *Iſrael*; 'tis of his own ſhewing, that *Jehoſaphet* would not undertake it till the Prophets of *Iſrael* were conſulted, and had encouraged it. However *Jehoſaphet* having been King of *Judah*, is not an Inſtance ſo directly to the Point.

But as Mr. *Falkner*, notwithſtanding his Miſtakes in comparing our Polity to the Jewiſh, ſhews a Propriety in the Subject, beyond what they will allow, who infer a contrary Right from that *manner* or *way of Kings* with which *Samuel*, either would deter the People of *Iſrael* from chooſing one, or at leaſt foretels what they would loſe by quitting the *Theocracy*, adminiſtred by Perſons more immediately commiſſioned by *God* himſelf; Mr. *Falkner* no leſs fully comes up to the caſe of putting the Kingdom under any other Head, than that which the Law allows, and ſays. Vid. *Canon* 1. 1640. *The Hebrew imports no more than* ratio *or* mos, *the Chaldee Paraphraſe*, Statutum Regis.

The Conſtitutions of this Realm oblige all the Subjects thereof, to maintain the the Royalty of the Crown: and further, that *it is a great and ſpecial Priviledg of a free-born People, that they cannot, according to the Condition of Slaves, have the chief and principal Dominion over them tranſlated from one to another, according to the Pleaſure of any Perſon whomſoever, though it be their own natural Prince.* Falk. p. 234.

What was in his Judgment, the due Conſequence of ſuch an Attempt, will appear by conſidering his ſecond part, where he *Mr.* Falkner's *ſecond Part.*

ſpeaks more directly to it; and tho it be againſt *the Subjects taking up Arms* upon any pretence whatſoever, yet it ſufficiently juſtifies the late *real* Occaſion for recourſe to them *ultimo neceſſitatis præſidio.*

Vid. inf.

It muſt be underſtood, that looking upon the Canons of 1640, as the Senſe of our *Church*, he thinks himſelf bound to aſſert *the Divine Right* of Kingſhip, in a more peculiar manner than any other Form of Government: and having duly obſerv'd that *in thoſe States or Relations which are fixed by Divine Inſtitution, there are ſome things ſo neceſſary and eſſential, that they cannot be ſeparated from them*; he makes *Irreſiſtibleneſs* to be one of thoſe *Eſſentials*: nor could he do leſs, ſeeing, tho all the *Canons* of 1640, lie under a Cenſure of much greater Authority in our *Church* than that with which they were made; he cites the firſt Canon as the Senſe of our *Church, That the moſt high and ſacred Order of Kings is of Divine Right, being the Ordinance of God himſelf, founded in the prime Laws of Nature, and clearly eſtabliſhed by the expreſs Texts both of the Old and New Teſtaments:* upon this ground he might well ſuppoſe that the People in chuſing a King (which he allows often to have been *where there hath been a Vacancy, and none could claim a Right of Succeſſion*) whatever Terms or *Contract* were made at the Choice, *ſtand obliged from the Nature of that Relation* they thereby *enter into, and the Laws which God hath eſtabliſhed concerning it, and not only from their own Intention.*

Page 419.

Page 422.

Page 423.

Vid. Stat. 13. Car. 2. *cap.* 12. *which provides that it ſhall not be thought to extend to confirm the Canons made in the Year* 1640.

Page 419.

Can. 1. 1640.

Page 414.

Page 420.

Page 414.

And if the Rights of Princes, or any of them are aſcertain'd by *God* himſelf, not by the ancient Conſtitution of the Government or expreſs *Contract*; then indeed, even in *Elective Principalities*, thoſe Divine Rights of Soveraingty, as well as ſuch as ariſe from the Original, or more immediate Contract, *are inveſted in the Perſon elected thereto before the Coronation.*

Page 423.

But to qualify this, 'tis to be conſider'd, that he contends that the Declaration againſt taking Arms relates particularly *to the King, not indefinitely to any King, and can bare no other Conſtruction, than to condemn the Engliſh Subjects taking Arms againſt their natural Soveraign the King of* England: *and therefore, tho the like Attempts againſt any other Kings who enjoy Soveraign Authority, are equally blameable in their Subjects; yet this Poſition,* ſays he, *does not aſſert the utter unlawfulneſs of taking Arms amongſt any other Nations, againſt him who hath the Title of King; if he doth not therewith enjoy that Right of Supream Government, which our Kings have and exerciſe.*

Page 338.

So that notwithſtanding the Canons of 1640, even in his Judgment, the Laws of *England* muſt determine this Controverſy.

And elſewhere he grants what ſhews, that the Examples for *Paſſive Obedience* which he inſtances in from the Jews, or Primitive Chriſtians, will not affect us.

Page 541.

"The Agreement, ſaith he, between the Condition of thoſe "*Jews*, whom he mentions, and the *Primitive Chriſtians* under "their Perſecutions, was ſo great, that if the Laws of Nature "would have allowed theſe Jews to reſiſt, it muſt alſo have been "lawful for the *Chriſtians* to have done the ſame; which is "contrary to their *general Profeſſion, and univerſal Practice.*

"But

"But then in relation to the Practice, he ſays, The Reſult of Page 501.
"all theſe Teſtimonies is, that when *the Authority, Laws, and*
"*Rules of Government* they liv'd under, did oppoſe the *Chriſtian*
"*Profeſſion*, or the Truth and Purity of its Doctrine, they thought
"it their Duty *patiently to ſuffer, and not, in Oppoſition to thoſe*
"*Laws* which were then eſtabliſh'd, to take up Arms againſt their
"Governours.

And coming to Examples of *Paſſive Obedience* among the *Jews*, when the *Soveraign Power had undertaken to deſtroy a part of the People*, he ſays,

"Forasmuch as the *Soveraign Power* in *Judea*, and many other Page 535, 536,
"Eaſtern Nations, and alſo in the Roman Empire, as their Laws 537, 538.
"declare, had ſuch an Authority, that the particular Reſcripts and
"Edicts of the Emperors were accounted Law, and what they
"determined was a Legal Deciſion or Sentence, and a judicial
"way of proceeding: *From theſe Conſiderations*, he ſuppoſes *it*
"*was not lawful* for any of the Perſons in the Inſtances above-
"mentioned by him, tho ſome of them were unjuſtly ſentenced,
"to have taken Arms in their own Defence.

But he tells us, *The excellent Conſtitution of our Engliſh Govern-* Page 539.
ment hath this advantage among others, that it gives ſufficient Secu-
rity to the Engliſh Subjects, that there is no way of judiciary or legal
Proceeding by the King himſelf, or any other againſt the Life or Pro-
perty of any Perſon, who lives peaceably and orderly, but according to
the eſtabliſh'd Laws of the Land, and upon a fair Trial of his Caſe:
Nor will our Laws allow any ſuch general Sentence, which may take in
innocent Perſons.

The deſtroying Corporations, the managing Juries, and improving Religious, and lawful Civil Aſſemblies, into Riots, nay, *Conſults* for *Treaſon*, had not then been brought to Perfection.

And the Diſpenſing Power having been attempted, but receded from, he ſays,

The true Religion is eſtabliſhed by our Laws, and no Law can be re- Page 542.
pealed or altered to the Prejudice of Engliſh Subjects, by the Pleaſure of
any Prince alone, and without the Conſent of the Peers, and the Re-
preſentatives of the Commons of England.

And indeed the good Man takes a great deal of Pains, from the Duty, Honour, and Intereſt of the Prince, the danger to evil Inſtruments, and the like, to prove, that it ought not to be preſumed that any ſuch Caſe, as we have known, will happen; which at this time looks like a Philoſophical Argument againſt Motion, and deſerves the like Confutation. However, looking upon ſuch Violations as but *ſimply poſſible*, he maintains that the Declarataion againſt Page 532.
taking Arms ought to be *in general Terms*; for that ſuch *extraor-* Page 361.
dinary Caſes, as may be put, *fall not under Conſideration*, (I may add) till they happen; for then they muſt be put, and remembred to juſtify what they have render'd neceſſary.

Nay, himſelf reſtrains the *general Terms* to a Subject's taking Page 360.
Arms *without any Command from his Prince, againſt thoſe who act*
by virtue, and in purſuance of his Commiſſion [*REGULARLY*]
granted to them.

Page 346. I will yield to him, *that it would be an high Reflection upon the Laws of our Realm, if there were* need of *conſulting ſkilful Lawyers* for *the general Rule of Duty*, and *to whom Men ought to yeild Obedience and Submiſſion:* Yet if learned Men will confound the plain Rule of Submiſſion to the *Powers* which are *in being*, by ſetting up a ſuppoſed inſeparable Right, in a Power which once had a being, but is become a meer Shadow and Spectre; 'twill be requiſite to have recourſe to them who have taken ſome pains in enquiring into the Conſtitution of the Government, to ſee what Remedy is thereby allowed in *extraordinary Caſes*.

Chriſtian Loyalty, P. 521. And whereas, ſpeaking of Officers ſuppos'd by ſome to have Authority of reſiſting in ſuch Caſes, he ſeems to know of none but by *Charter* or *Commiſſion having their Authority depending upon the King*; a little Skill in the Law, or in Antiquity, would have inform'd him of ſeveral others, at leaſt ſuch as were not ſo dependent, not only hereditary *Great Officers*, and other Great Men of the Kingdom, but other Officers choſen by the People, the *Herethochii*, or *Lords Lieutenants*, and the *Sheriffs* anciently, and the Officers in Boroughs by Preſcription, and Conſtables at this day.

Vid. inf. *of the Earl Marſhall*, &c.

Vid. *The Act of* Pacification *between the Engliſh and the Scots*, Temp. Car. 1. *which provides that it ſhall be lawful, for the Subjects of either Nation, to fall upon the Forces which ſhall come out of one into the other, without the Conſent of the Parliaments of both Kingdoms.*

I will be as ready as he to maintain that for the future, ſuch Suppoſals as he touches with great Fear and Tenderneſs, will be very remote Poſſibilities; and being look'd upon in our Law as *vain* in the Apprehenſion, are thought not to ſtand in need of any particular Proviſion: but he mentions three Caſes in which upon Page 531. *yeilding the Suppoſitions*, he grants *the Anſwer* given by *Barclay* to two of them, and to all three by *Grotius*, *to be true*.

To the general Queſtion, *May there no Caſes fall out, in which the People* [*by their Authority*] *may take Arms againſt the King?*

Page 515. *Barclay* anſwers, *Certainly none, as long as he is King, or unleſs* ipſo jure Rex eſſe deſinat, *which is pregnant with the Affirmative*, that there may be ſome Caſe wherein he by *Law*, or *of Right*, *ceaſes to be King*.

And *Barclay* manifeſtly allows of two, *Grotius* adds a third branch'd into a fourth, in which Mr. *Falkner* concurs with him, as well as with *Barclay* and *Grotius* in the other two.

Pag. 525, 527. The firſt particular Caſe upon which he delivers his own Opinion, without referring to Authorities, is, of a King's voluntarily relinquiſhing and laying aſide his Crown and Government: of this ſeveral Examples are mentioned, and among the reſt *nine* of our *Saxon Kings*; and he rightly obſerves, that *if ſuch Perſons ſhould act againſt the ſettled Government of their reſpective Kingdoms, after they are fixed in the next Heir in an Hereditary Kingdom, or in another King, according to the Conſtitution of Elective Principalities; the reſiſting any of them is not the taking Arms againſt the King, but againſt him who now is a private Perſon.*

Voluntary Reſignation, or Ceſſion, or Abdication.

Page 426.

If therefore the late King's *Abdication* were ſuch a relinquiſhing as he means, which it muſt be if he receive *Grotius*; or if he hold to the other Caſes, in which, as it will appear, he yields that

Vid. ſup. *f.* 13.

he

he would be deveſted of Soveraignty; in all ſuch Caſes every thing is lawful againſt the late King, that would be lawful againſt any other private Perſon.

2. The ſecond Caſe agreed by all three, and by Biſhop *Bilſon*, is of a Prince's *undertaking to alienate his Kingdom, or to give it up to the Hands of another Soveraign Power againſt the Mind of his Subjects.* And he thinks *Barclay, Grotius,* and *Biſhop* Bilſon, *truly to aſſert, that ſuch an Act of Alienation, or of acknowledged Subjection, eſpecially if obtained by evil Methods, as was done in the Caſe of King* John, *is null and void; and therefore can neither give any Right of Soveraignty to another, nor diſpoſſeſs the King himſelf thereof.* Page 526. Alienation of the Kingdom.

But if any ſuch Prince ſhall actually and forcibly undertake to bring his Subjects under a new Supream Power, who have no Right thereto, and ſhall deliver up his Kingdom to be thereby poſſeſs'd. Grotius, ſaith he, *doubteth not, but he may be reſiſted in his undertaking*; but then ſays *Mr.* Falkner, *this Reſolution muſt proceed upon this ground, that this Action includeth his deveſting himſelf of his Soveraignty, together with his injurious proceeding againſt thoſe who were his Subjects: And* Barclay, *who allows only two Caſes in which a Prince may be deveſted of his Royal Dignity, doth account this to be one of them.*

Not to mention the notorious truckling to *France,* and Pupilage under that bribing and impoſing Monarch; ſince the Kings of *England* are Supream in Eccleſiaſtical, as well as Civil Affairs; and the late King by Force and open Violation of the Laws, againſt the univerſal Bent and Mind of his People, renounc'd his own Supremacy in yielding to the Pope's; and ſince the People might reſiſt him therein; but that which juſtified their reſiſting him, deveſted him of his Soveraignty; 'tis evident, that according to Mr. *Falkner,* and the Learned Men, whoſe Authority he receives, the *late King* thereby *ceas'd* to be *King:* which ſufficiently juſtifies that Vote of our Convention, ſince confirm'd by the Parliament, that a *Popiſh King is inconſiſtent with this Proteſtant Kingdom.*

3. The laſt Queſtion, or rather part of a Queſtion, which this learned Author takes *notice of,* in the Reſolution of which he agrees with *Barclay* and *Grotius,* is, *Whether if a Soveraign Prince* ſhould actually undertake to deſtroy *his whole Kingdom, or any conſiderable part thereof, they may not in theſe Circumſtances have liberty of defending themſelves by taking up Arms?* Page 527. *Attempting to deſtroy the Kingdom, or any conſiderable part of it.* Pag. 528, 529.

Now we muſt allow him here to diſtinguiſh his Sentiments, by inveighing againſt *Junius Brutus,* and other *Subverters* of *Soveraign Power,* who *ſtart and urge this Queſtion:* However it may not be amiſs to take him into a Corner, to know his Mind of the matter, *under the Roſe.* It muſt be remembred that he allowed of *Barclay,* as a competent Judg in the Queſtions which he determines, and as *to a Soveraign Prince's undertaking to cut off, or to ruin and deſtroy the whole Body of his People,* he *acknowledges that this is the other only Caſe in which* Barclay *eſteemeth a Soveraign Prince to forfeit his Right of Government, and that thereupon it may be lawful to reſiſt him.* Tho, as I obſerv'd before, *Grotius* cites *Barclay* for a third, Page 528. Page 531. Page 529. Sup. f. 25.

this which he receives as *Barclay*'s ſecond, as he gathers from *Barclay*, muſt not exceed *the Bounds of meer Defence, without any Attempts of invading or revenging*; yet it may be a Queſtion, how far this may be conſiſtent with his yeilding, that a former King in ſuch caſe becomes a *private Perſon*. And indeed I think he is in the right in allowing of no caſe to warrant Reſiſtance, till he who had been a
Page 526. King becomes a *private Perſon*.

Accordingly, neither *Barclay* nor he, in the caſe of a King's undertaking the Ruin of the Whole, or in any other caſe, will *allow* the *taking Arms* againſt the Soveraign Power; becauſe *a Prince by ſuch an undertaking as this, loſeth his Royal Authority, and is no longer King*; *ſe omni dominatu & principatu exuit, atq; ipſo jure, ſive ipſo facto, Rex eſſe deſinit.*

Page 530. And the Reaſon given by *Grotius* in the ſame caſe is irrefragable, *conſiſtere ſimul non poſſunt voluntas imperandi, & voluntas perdendi: quare qui ſe hoſtem Populi totius profitetur, eo ipſo abdicat Regnum*: "A Will to govern, and a Will to deſtroy, cannot conſiſt together; "wherefore he who profeſſes himſelf an Enemy to his whole Peo- "ple, in that very thing *abdicates* his Kingdom.

I cannot but obſerve that here is a *Forfeiture* own'd, and an al-
Page 529. lowance of a Right in the People, or ſome of them at leaſt to *judg of the Forfeiture*. Elſewhere Mr. *Falkner* ſays, *To aſſert that the People or Inferiors, are of right Judges of the Caſes in which they may reſiſt their Superiors, is as much as to ſay, they are bound to Subjection only ſo far as themſelves ſhall think fit, and that they may claim an Authority over their Governours, and paſs Judgment upon them, and deprive them of their Dignity, Authority, and Life it ſelf, whenſoever they ſhall think it requiſite and needful.*

Barclay *eſteemeth a Soveraign to forfeit his Right*, &c.

Page 365.

But this Inference here, as well as his former Declaration, ſhews,
Page 359. that he ſpeaks not of *extraordinary Caſes, which as he has it, we may well preſume, or hope, may never be in act.*

And if a judicial Power, even in ſuch *extraordinary* Caſes, ſound harſh, we may learn of him to ſoften it, with the Terms in which he juſtifies the Exerciſe of a like Power over Kings in Spirituals.

Page 321. "Tho, ſays he, all Chriſtians upon manifeſt Evidence, may in "ſome caſes ſee cauſe to diſown a Soveraign Prince (as was done "in *Julian*) from being any longer a Member of the Chriſtian "Society; yet in ſuch Caſes his Memberſhip ceaſeth, and is for-
Page 322. "feited by his own Act, and not properly by a judicial Sentence "and formal Proceſs. And ſome of the Romiſh Writers go much "this way, in giving an account, how the Biſhop of *Rome*, whom "they ſuppoſe to be Superior to all Men on Earth, may by "reaſon of Hereſy or ſuch Crimes, be deprived of Chriſtian "Communion.

I muſt herein agree with Mr. *Falkner*, that 'tis not the Judgment which creates the *Forfeiture*, but the Grounds of the Judgment; which ought to be duly weighed.

Page 542. 4. *The only thing which*, according to Mr. *Falkner*, *in this Caſe can farther be propoſed is, Whether if a Supream Governour ſhould according to his own Pleaſure, and contrary to the eſtabliſhed Laws, and his Subjects Property, actually engage upon the deſtroying and ruining*

ruining a conſiderable part of his People, they might not defend themſelves by taking Arms?

This which he ſays *is notional* and *ſpeculative*, has too ſadly been reduced to Practice, in *Ireland* eſpecially. Page 543.

After mentioning the Pariſian Maſſacre, he *confeſſes*, that *if ever any ſuch ſtrange Caſe as is propos'd, really happen in the World, it would have great Difficulties. Grotius*, ſays he, *thinks that in this utmoſt extremity the uſe of ſuch Defence as a laſt Refuge*, ultimo neceſſitatis præſidio, *is not to be condemned, provided the Care of the common Good be preſerved. And*, ſays Mr. *Falkner, if this be true, it muſt be upon this ground, that ſuch Attempts of ruining do*, ipſo facto, *include a diſclaiming the governing thoſe Perſons as Subjects, and conſequently of being their Prince or King. And then the Expreſſions of our Publick Declaration and Acknowledgment would ſtill be ſecur'd, that it is not lawful upon any Pretence whatſoever to take Arms againſt the King.* Page 544. Page 545.

In ſhort, Mr. *Falkner*'s Judgment in theſe three, or rather four Caſes, is this, That theſe Caſes are ſo *extraordinary*, that they fall not under any Conſideration *as a pretence*, but will juſtify the Subjects taking Arms when they are *real*; and that when any ſuch Caſe happens, the taking Arms is not ſo much authoriz'd by any Judicial Power in the People, or their Repreſentatives, as by the Facts themſelves, whereby the King *ipſo facto*, without Sentence, incurs a *Forfeiture*, and ceaſes to be *King*. And had he lived to apply his own Rules, no Man can doubt but he would in Terms have juſtified our renouncing Allegiance to the late King: Whether upon the account of the *Forfeiture*, or the Judgment upon it, or both, is not very material: eſpecially conſidering that both *Barclay* and *Grotius* ſpeak of an Abſolute Prince, not a Platonick Monarchy, ξευχθεῖσα νόμοις, "yok'd or coupled with Laws. Vid. Pag. 398.

'Tis well known to have been *Grotius* his Opinion, That if the Supream Government be part in the People, or Senate, and part in the King: *If the King invade what is not his Right, he may be oppos'd with juſt Force, becauſe he hath not ſo far any Supremacy: and this he thinks muſt take place, tho it be ſaid that the Power of War is in the King; for that*, ſaith he, *is only to be underſtood of Foreign War, when whoſoever hath any part in the Supream Power cannot but have a Right to defend that part.* Page 348. Page 344. *Cited in Chriſtian Loyalty*, pag. 348.

Mr. *Falkner* indeed excepts againſt this, as erecting *two diſtinct Governments, each of which have a Supream Power of judging and executing.* *Object.*

Yet he agrees that this is warrantable in the Empire. *Anſw.* 1.

1. Becauſe it is allowed by its Conſtitutions and Capitulations: But then he ſays, *If we look into the Records of the former Ages, we may thence diſcern that no Subjects whatſoever of this Realm had, under any pretence, an Authority to bear Arms againſt the King.* Page 349.

How far he is right in this Aſſertion, I ſubmit to their Judgments who ſhall impartially weigh the following Authorities.

2. His other Reaſon of a Difference between the State of the Empire, and of *England*, is, That the *Princes of the Empire in their*

own Territories enjoy a Right of peculiar Soveraignty, which alters not the caſe in relation to the *Emperor*; for both they and their People are Subjects to the Emperor: and the miſchief of a Judgment left in Subjects, is either equal both in one and the other, or if there be any difference 'tis greater in the Empire: becauſe, tho the Latitude for judging may be the ſame, the Princes there have the greater Opportunities of gathering ſtrength againſt the Soveraign, and conſequently more Temptations to it, than where all is more immediately under the Inſpection, and Influence, of the Supream Governour.

Anſw. 2. But ſtill it appears by what I have ſhewn out of Mr. *Falkner*, that what he ſays, muſt relate only to an *ordinary* Judicial Power, or *in ordinary Caſes*; for if he allows it in *extraordinary Caſes*, even where the Prince is more abſolute, than he agrees the Kings of *England* to be; *à fortiori*, is this allowable here in ſuch Emergencies?

Pag. 344, 345. Wherefore notwithſtanding his charging the two *Jeſuits*, *Leſſius*, and *Becanus*, with an *high ſtrain of Treaſon and unchriſtian Diſloyalty*, bating what they ſay in juſtification of killing a Prince by *private Perſons*, *for their ſelf-defence*, even *while he remaineth a Prince*; I ſee not any material difference between him and them.

And being our Diſpute is chiefly with Papiſts, with others but as they are their Friends out of Folly or Deſign, it cannot be improper to tranſcribe part of his Quotation from the two learned Jeſuits, *agreeing almoſt word for word in theſe Poſitions.*

Page 344. "That a Prince who hath a juſt Title becomes a Tyrant with "reſpect to the Adminiſtration of the Government, when he de-"ſigns in his Government, and aims at his private Advantage, and "not the *Publick Good*, and *burdens the Common-wealth with unjuſt* "*Exactions*, *ſells the Offices*, and Places of Judges, and makes Laws "to his own Advantage, and not the Publick.

"That *when this Tyrant is no longer fit to be* born, this Prince is "firſt to be *depos'd*, or to be *declar'd an Enemy by the Common-wealth*, "*or the Chief Eſtates of the Kingdom*, *or any other who hath Au-*"*thority*, and *then he thereby ceaſeth to be a Prince*, and it be-"comes lawful to attempt any thing againſt his Perſon and "Life.

It being made a Queſtion, What was Biſhop *Bedell*'s Opinion of Subjects taking Arms againſt their Prince in Extraordinary Caſes; he having been ſaid barely to repreſent the Defence made by others, without interpoſing any thing of his own: and the Learned Writer of his Life having declar'd it *unlawful and impious* for a Subject *to reſiſt his Prince in any Caſe whatſoever*, which he ſays he obſerves for fear the Biſhop's words ſhould be *taken by the wrong Handle*. As if the Biſhop gave no Intimation of his Mind herein, to countenance reſiſting in any caſe whatſoever.

Life of Biſhop Ecdell, *p.* 442. I ſhall take leave to give an account of the Biſhop's Anſwer to Mr. *Wadſworth*, who charges the *Hugonots* and *Guiſes* of *France* and *Holland with raiſing Civil Arms*, *ſhedding of Blood*, *occaſioning Rebellion*, *Rapine*, *Deſolations*, *principally for their new Religion.*

The

The Biſhop ſays, theſe poor People having endur'd ſuch barbarous Cruelties, Maſſacres, and Martyrdoms, as ſcarce the like can be ſhewed in all Stories, are now accuſed as the Authors of all they ſuffer'd. No, ſays the Biſhop, they be the Laws of the Roman Religion that are written in Blood, and the perfidious Violation of the Edicts of Pacification, that have ſet France *and* Flanders *in combuſtion.* And afterwards having enlarg'd upon the Fact he adds. Page 443.

And tell me in good ſooth, Mr. Waddeſworth! *Do you approve ſuch barbarous Cruelty? Do you allow the Butchery at* Paris? Page 444.

What is this leſs than to ſay, that no Man can condemn theſe poor Proteſtants, without approving the Cruelties exercis'd againſt them?

The Biſhop proceeds in their Vindication.

" Do you, ſays he, think Subjects are bound to give their Throats " to be cut by their fellow Subjects, or to (offer them, without " either humble Remonſtrance or Flight, to) their Princes at " their meer Wills againſt their own Laws and Edicts? You would " know, *quo jure* the Proteſtants Wars in *France* and *Holland* are " juſtified (I interpoſe not my own Judgment, *not being throughly acquainted with the Laws and Cuſtoms of thoſe Countries,* but " I tell you what both they, and the Papiſts alſo, both in *France* " and *Italy*, have in ſuch Caſes alledged). Firſt the Law of *Nature*, which (they ſay) not only alloweth, but inclineth and " enforceth every living thing, to defend it ſelf from Violence. " Secondly, That of Nations, which permitteth thoſe that are in " the Protection of others, to whom they owe no more but an honourable Acknowledgment, *in caſe they go about to make themſelves abſolute Soveraigns, and uſurp their Liberty, to reſiſt and ſtand for the ſame. And if a lawful Prince (which is not yet Lord of his Subjects Lives and Goods) ſhall attempt to diſpoil them of the ſame, under colour of reducing them to his own Religion, after all humble Remonſtrance, they may (ſay they) ſtand upon their own Guard, and being aſſailed, repel Force with Force,* as did the *Maccabees* under *Antiochus.* In which caſe notwithſtanding, the " Perſon of the Prince himſelf, ought always to be ſacred and " inviolable. *Theſe are the Rules* of which the *Proteſtants* that " have born Arms in *France* and *Flanders*, and the *Papiſts* alſo " both there and elſewhere, as in *Naples*, that have ſtood for the " defence of their Liberties, have ſerved themſelves. *How truly, I eſteem it hard for you and me to determine, unleſs we were more throughly acquainted with the Laws and Cuſtoms of thoſe Countries, than I for my part am.* Page 445.

Added in the Margin.

The Paſſage above is to be conſidered as a Relation, not as the Author's Opinion: But yet for fear of taking it by the wrong handle, the Reader is deſired to take notice, that a Subject's reſiſting his Prince in any Cauſe whatſoever, is unlawful *and* impious.

1. Here his Interrogation ſtrongly implies the Aſſertion, that Subjects are not bound to give their Throats to be cut by their fellow Subjects, or offer them without either humble Remonſtrance or Flight to their Princes, at their meer Wills againſt their own Laws and Edicts.

2. The Argument from the Laws of Nature and Nations, he repreſents with due ſtrength, and apparent marks of Favour.

All the Heſitance which he makes in pronouncing abſolutely on their ſide is, from his not being *throughly acquainted with the Laws and Cuſtoms of thoſe Countries.*

Wherefore as he ſuppoſes not Chriſtianity to lay any Obligation upon the Subjects, beyond the Duty reſulting from the particular Conſtitutions of the reſpective Governments; ſo he does fully admit that the Laws ad Cuſtoms of ſome Countries may allow of Reſiſtance in ſome Caſes. Hence it appears, that no Man can truly ſay that he takes the Biſhop's words by the wrong handle, who would infer from him, that it is neither *unlawful* nor *impious* for Subjects, in ſome Countries, and in ſome Caſes, to reſiſt their Princes. Nay, without knowing the Conſtitution of *France*, or of the *Low-Countries*, he ſuppoſes that in ſuch *extraordinary* Circumſtances as the poor Proteſtants in both places lay under, no Man can condemn them, without approving of the barbarous Cruelty and Butchery of their Perſecutors.

Page 446. Nay, for *Holland*, he particularly urges, that the Kings of *Spain* were not abſolute Lords there, and ſays, *any reaſonable Man may doubt, Whether the Title of Earl, to which they ſucceeded, imported ſuch a Power as they exercis'd*; which is as much as to ſay, that ſince they aſſumed a greater Power than the Conſtitution warranted, Arms againſt them were lawful: and if thus much is not implied, it muſt be own'd that the Biſhop very impertinently affirms, that the Kings of *Spain* were not abſolute Lords in *Holland*. *Bp* Bedell, *p.* 447.

No Man can doubt of his meaning thus much; ſince he affirms poſitively, that *it is no hard matter to diſcern pretended Priviledges from true, and Treaſon from Reaſon of State. But*, ſays he, *to take Arms to change the Laws by the whole Eſtate eſtabliſhed is Treaſon, whatſoever the Cauſe or Colour be:* which may take in thoſe that fight on the ſide of a King, as well as thoſe who fight againſt him.

Nor do I know what can well be ſaid againſt what the judicious Mr. *Lawſon* urges to this purpoſe: "Treaſon, ſays he, againſt "Laws is more hainous than Treaſon againſt Perſons; and Treaſon againſt Fundamental Laws, than Treaſon againſt Laws for "Adminiſtration. This Treaſon againſt the Fundamentals was "charged upon the Earl of *Strafford*, and the Perſonal Commands "of the King could not excuſe him; yet it was not thought that "the Judgment paſt upon him ſhould be made a Precedent for "Inferiour Courts; becauſe none but a Parliament could judg of "and declare the Conſtitution, and what is againſt it, and "what not." *Lawſon's* Politica ſacra & Civilis 362. *laſt Edit.*

"If, ſays Biſhop *Bilſon*, a Prince ſhould go about to ſubject his "Kingdom to a Foreign Realm, or change the form of the Common-"wealth from Impery to Tyranny; or neglect *the Laws eſtabliſh'd "by common Conſent of Prince and People, to execute his own Plea-"ſure*; in theſe and other Caſes which might be named, if the "Nobles and Commons joyn together to defend their ancient "and accuſtomed Liberty, Regiment, and Laws, they may not "well be accounted Rebels. And ſoon after he ſpeaks *of a Power for preſerving the Foundation, Freedom and Form of their Commonwealths, which they fore-priz'd when they firſt conſented to have a King.* Biſhop *of Chriſtian Subjection*, Ed. 1586. p. 279, 280.

Where

Where his meaning cannot be restrain'd to express Provisions, excluding such as may be equitably intended.

That which is offer'd in the History of *Passive Obedience* to qualify Bishop *Bilson*'s Expressions, I dare say will be a Confirmation of his Authority, in the Judgment of any Man who impartially weighs the following Proofs of the nature of our Government.

History of Passive Obedience, p. 27.

" At the time, says the *Historian*, when Bishop *Bilson*'s Book " was written, Queen *Elizabeth* was assisting the *Dutch*, against their " and her common Enemy, the Crown of *Spain*: Now if in the " Low Countries the *Government was founded in Compact*, as many " Learned Men say, and that all their Priviledges, Sacred and Civil, " *contrary to that Agreement*, were invaded, and the Inquisition in- " troduced, all their Petitions slighted, and some hundred thou- " sands barbarously murder'd, *this alters the Case*, while it can no " ways hold good in *Governments* where there is no *such Compact*. Passing by due Reflections upon the Impunity which he allows to the most barbarous Murders, where the Government is not founded in Compact; it will appear to be *enough for us*, that where it is founded *in Compact*, the *Nobles* and *Commons* may joyn in the Defence of their *ancient and accustomed Liberty, Regiment and Laws*; *nor may they in such Case well be accounted Rebels.*

And not to heap Authorities, with this agrees the Divine *Plato*, who after he had affirm'd that the highest degrees of Punishment belong to those, who will misguide a Ship, or prescribe a dangerous new way of Physick, having brought in *Socrates*, asking whether Magistrates ought not to be subject to the like Laws? himself asks, " What shall be determined, if we require all things to be done " according to a certain Form, and set over the Laws *themselves*, " one either *chosen by the Suffrages of the People*, or by *Lot*, who " slighting the Laws, shall for the sake of Lucre, or to gratify his " Lust, not knowing what is fit, attempt to do things contrary to " the Institutions?

Platonis Politicus, *f.* 299. Ed. Serrani: Ὁκ ἂν ὅγε θέλων καὶ ἑκὼν ἐν τοῖς τοιούτοις ἄρχειν δικαιότατ' ἂν ὁπολῶ πάσχοι καὶ ἀποτίνοι.

Ἐι κτ̄ συγγράμματα μὲν ἀναγκάζομεν ἕκαστον γίγνεσθαι τῶν εἰρημένων, καὶ τοῖς συγγράμμασιν ἐπιστατεῖν ἡμῶν τὸ χειροτονηθέντα, ἢ λαχόντα ἐξ τύκης.

This Man, both he and *Socrates* condemn, as a greater Criminal than those which he mention'd; whose Crime he aggravates, as 'tis " an acting against those Laws, which through a long Experience " had been ordain'd by their Counsel and Industry, who had op- " portunely and duly weighed every thing, and had prevail'd upon " the People to submit to them.

CHAP. III.

Five Heads of poſitive Law mention'd. Upon the firſt Head are produc'd the Confeſſor's Laws, Bracton, Fleta *and the Mirror, ſhewing the Original Contract, with the Conſequences of the King's breaking his part. Some Obſervations upon the Coronation Oath, with the Opinions of Sir* Henry Spelman, Cujacius *and* Pufendorf *of the Reciprocal Contract between Prince and People. The Objection from the pretended Conqueſt anſwer'd in ſhort, with reference to the ſecond part. The Senſe of Dr.* Hicks *and* Saravia *upon the Coronation-Oath, receiv'd with a Limitation from* Grotius. *The* Curtana *anciently carried before our Kings, explaining the Mirror. A Paſſage in Dr.* Brady *againſt the Fundamental Contract touch'd upon, referring the particular Conſideration of him to the ſecond Part.*

TO proceed to poſitive Law, I ſhall ſhew how the Contract between Prince and People ſtood, and hath been taken, both before the reputed Conqueſt, and ſince: Where 'twill appear.

1. That Allegiance might, and may in ſome Caſes be withdrawn, in the Life-time of one who continued King, until the occaſion of ſuch withdrawing, or Judgment upon it.

2. That there was and is an eſtabliſh'd Judicature for this, without need of recurring to that Equity, which the People are ſuppos'd to have reſerv'd.

3. That there has been no abſolute Hereditary Right to the Crown of *England*, from the beginning of the Monarchy; but that the People have had a Latitude, for ſetting up whom of the Blood they pleas'd, upon the Determination of the Intereſt of any particular Perſon, except where there has been a Settlement of the Crown in force.

4. That they were lately reſtored to ſuch Latitude.

5. The People of *England* have duly exercis'd their Power in declaring for King *William* and Queen *Mary*, and *recognizing* them to be **Lawful** and **Rightful** King and Queen.

1. If the King not obſerving his Coronation-Oath in the main, loſe the Name of King, then no Man can ſay that Allegiance continues: But that ſo it was before the reputed Conqueſt, appears by the *Confeſſors* Laws, where they declare the Duty of the King.

Vid. Leges Sancti Edwardi, 17. de Regis Officio. Nec nomen Regis in eo conſtabit.

"But the King, becauſe he is Vicar to the Supream King, *is* " *conſtituted to this end*, that he ſhould rule his Earthly Kingdom, " and the People of God; and above all ſhould reverence God's holy

" Holy Church, and defend it from injurious Perſons, and pluck " from it wrong Doers, and deſtroy and wholly ruin them; which " unleſs he does, not ſo much as the Name of a King will remain " in him, *&c.* To which *Bracton* ſeems to refer, when he ſays, " The King *cannot hold his Crown* without maintaining Juſtice, " Judgment and Peace: that therein conſiſts his *Crown* or *Royal* " *Authority.*

Vid. Bracton, *l.* 2. *c.* 24. Eſt enim Coronæ Regis facere Juſtitiam & Judicium & tenere Pacem ſine quibus non poteſt eā tenere.

Hoveden ſhews how this Law was receiv'd by *William* 1.

" The King and his Deputy (or *Locum tenens* in his Abſence) " is conſtituted to this end, *&c.* in ſubſtance as above: Which " unleſs he does, *the true Name of King* will not remain in him. And, as the *Confeſſor*'s Laws have it (in which there is ſome miſtake in the Tranſcriber of *Hoveden* otherwiſe agreeing with them) Pope *John* witneſſes, That he loſes the Name of King, who does not what belongs to a King: which is no Evidence that this Doctrine is deriv'd from the Pope of *Rome*; The Pope only confirms the Conſtitution, or gives his Approbation of it, perhaps that the Clergy of thoſe Times might raiſe no Cavils from a ſuppoſed *Divine Right*. And to ſhew that this is not only for violating the Rights of the Church, the *Confeſſor*'s Laws inform us, that *Pipin*, and *Charles* his Son, not yet Kings, but Princes under the *French* King, fooliſhly wrote to the Pope, asking him, if the Kings of *France* ought to remain content with the bare Name of King? By whom it was anſwer'd, *They are to be called Kings, who watch over, defend, and rule God's Church and his People*, &c. *Hoveden*'s Tranſcriber gives the ſame in ſubſtance; but, through a miſerable miſtake in Chronology, will have it, that the Letter was written by *Pipin* and his Son, to *W.* 1. *Lambart*'s Verſion of St. *Edward*'s Laws goes on to Particulars, among others, That the King is to keep *without diminution all the Lands, Honours, Dignities, Rights, and Liberties of the Crown*; *That he is to do all things in his Kingdom according to Law, and by the Judgment of the* Proceres, *or* Barons *of the Realm*; *and theſe things he is to ſwear before he is crown'd.*

Hoveden, *f.* 604. Rex atq; Vicarius ejus. Nota, *There was occaſion for naming the Deputy, by reaſon of the acceſſion of* Normandy, *requiring the King's Abſence ſometimes.*

Vid. *The Caſe of* Reboboam, inf. *in the Quotation out of Lord* Clarendon, *f.* 32.

Lambert. Qui vigilanter defendunt & regunt Eccleſiam Dei & Populum ejus.

Barones Majores & Minores.

By the Coronation-Oaths before the reputed Conqueſt, and ſince, all agreeing in Subſtance, every King was to promiſe the People three things.

Vita Ælfredi, *f.* 62. Ego tria promitto populo Chriſtiano meiſq; ſubditis, &c.

1. That God's Church, and all the People in the Kingdom, ſhall enjoy true (*a*) Peace.

(*a*) Nota, *Protection.*

2. That he will forbid Rapine, and all Injuſtice, in all Orders of Men.

3. That he will promiſe and command Juſtice and Mercy in all Judgments.

And 'tis obſervable, that *Bracton*, who wrote in the time of *H.* 3. tranſcribes that very formulary, or rather Abridgment of the Oath, which was taken by the *Saxon* Kings. In *Bracton*'s time, 'tis certain, the Oath was more explicit, tho reducible to thoſe Heads; and 'tis obſervable, that *Bracton* ſays, The King *is created and elected to this end, that he ſhould do Juſtice to all.* Where he manifeſtly ſhews the King's Oath to be his part of a binding Contract, it being an Agreement with the People, while they had Power to chuſe. With *Bracton* agrees *Fleta*, and both inform us, that in their days there was no ſcruple in calling him *a Tyrant*, and *no King*, who

Bracton, *lib.* 3. *c.* 9.

Fleta, *lib.* 1. *c.* 17.

oppreſſes his People *violatâ dominatione*, as one has it; or *violentâ*, as the other; either the Rule of Government being violated, or with a violent Government; both of which are of the like import.

Mirror, *p.* 8. The *Mirrour*, at leaſt, puts this Contract out of diſpute; ſhewing the very Inſtitution of the Monarchy, before a Right was veſted in any ſingle Family, or Perſon: " *When forty Princes, who had the* " *Supream Power here, choſe from among them a King to reign over* " *them, and govern the People of God, and to maintain the holy Chri-* " *ſtian Faith, and to defend their Perſons and Goods in quiet, by the* " *Rules of Right. And at the beginning they cauſed the King to* " *ſwear, That he will maintain the holy Chriſtian Faith with all his* " *Power, and will rule his People juſtly, without regard to any Perſon,* " *and ſhall be obedient* to ſuffer Right or Juſtice, *as well as others* " *his Subjects.* And what that *Right* and *Juſtice* was in the laſt reſult, the *Confeſſor*'s Laws explain, when they ſhew, that he may loſe the *Name of King.*

Vid. Seld. ſpicil. ad Eadmerum, *f.* 171. Diſſert. ad Flet. *f.* 591. Hoved. *f.* 608. Leges *H.* 1. *confirming St.* Edward's *Laws.* Cum illis emendationibus quibus Patermeus emendavit conſilio Baronum ſuorum, *f.* 244. partim

Theſe Laws were not only received by *W.* 1. and in the *Codex* of the Laws of *H.* 1. but were the Laws which the Barons in their early Conteſts which they had with their encroaching *Kings*, always preſs'd to have maintain'd; and that their Sanction might not be queſtion'd, the Obſervance of them was made part of the Coronation-Oath, till ſome *Arch-biſhops* or others, careful only of *Clerical Rights*, provided for no more of thoſe Laws than concerned them, leaving out the *People*'s ſhare: as if while the *Clergies* Rights and Power were kept up, a Nation could never be in danger of ſuffering under Tyranny.

Mat. Par. *f.* 243. Barones petierunt de Rege Johanne quaſdam libertates & Leges *Regis Edwardi*, in cartâ Regis Henrici ſcripta ſunt, partim ex legibus *Regis Edwardi* antiquis excerpta ſunt.

Vid. *Appendix to Plain Engliſh*, Ed. An. 1690. Vid. Ruſhw. 1 vol. *f.* 200. *Coronation of* C. 1. *namely the Laws, Cuſtoms, and Franchiſes granted to the* [Clergy] *by the glorious King St.* Edward. Vid. Rot. clauſ. 1. *E.* 3. Rot. clauſ. 1. *R.* 2. *n.* 44. Magna Cart. Ed. cum Privilegio An. 1558.

By the Oath which is upon Record, and in ancient Prints, the King is to ſwear to *grant*, *keep*, and *confirm* among others, eſpecially the Laws, Cuſtoms, and Freedoms granted [*the Clergy and People*] by the moſt glorious and holy King *Edward.* And even after the *King* has taken his Oath, they were to be ask'd, *If they would conſent to have him their King, and Leige Lord?* which is the Peoples part of the *Contract*; and thus the *Contract* becomes *mutual.* To which purpoſe the *Learned* Sir *Henry Spelman* cites * *Cujacius* the *Great Civilian*, to ſhew that Faith between a Lord and Vaſſal is *Reciprocal*; and gives an Inſtance in the Oath of one of our Saxon Kings [*Knute*] for the proof of its being ſo here between King and Subject. With *Cujacius* agrees the no leſs judicious Civilian *Pufendorf*, one of the Ornaments of the preſent Age. " When, ſays he, the " Power is *conferr'd* upon a King, there is a *mutual* Tranſlation of " Right, or a *reciprocal* Promiſe.

Juramentum Regis quando coronatur. Spelman Gloſ. tit. *Fidelitas.* * Vid. Cujac. de feudis *lib.* 2. *f.* 512. Et quibus ex cauſis vaſſallus feudum amittit eiſdem etiam fere Dominum proprietatem ſine diminutionem feudi amittere eamq; vaſſallo accedere.

† Sam. Puſend. de Interregnis, *p.* 274. Quando in Regem confertur Imperium eſt mutua juris tranſlatio, ſeu reciproca promiſſio.

If

If it to objected, That tho there might have been ſuch a Contract, with a free People at the beginning, it ceas'd to be ſo from the time of the Conqueſt. *Object.*

I anſwer; *Anſw.*

1. Till there be a Conſent and Agreement to ſome Terms of Government and Subjection, 'twill be difficult, if poſſible, to prove any Right in a *Conqueror*, but what may be caſt off as ſoon as there is an opportunity.

" Yeilding, ſays a judicious Author, is a *Pact* by which he that " is overcome in War, to avoid a greater Evil, ſubmits himſelf to " anothers Power, and takes new or ſtrange Laws. This, ſays he, " may be divided into *ſimple* or *pure*, when any one ſubmits him- " ſelf to the meer Will and Pleaſure of the Conqueror: And " compound or *conditional*, when indeed one ſubmits to anothers " Power, but under Conditions, whereby either every Man pro- " vides for himſelf, or for the whole *Community*. Vid. Templum Pacis, *pag.* 767. Deditio eſt pactus quo bello inferior majoris mali evitandi ergo poteſtati alterius ſeſe ſubmittit, & in jura aliena tranſit. Dividi poteſt in ſimplicem ſive purum, quando quis mero Victoris arbitrio ſeſe ſubmittit: Et compoſitum ſive conditionatum, quando alterius quidem poteſtati quis ſeſe ſubjicit, ſed ſub conditionibus quibus aut ſinguli ſibi conſulunt, aut toti univerſitati.

And to the ſame purpoſe *Textor* in his *Synopſis* of the Law of Nations. Textoris Synopſis Juris gentium, *p.* 129.

" Victory, ſays he, is either reſtrain'd by *Compact*, or abſolute; " in the firſt caſe the *Conqueror* acquires no more Right than was " yielded to him by the *Pact*.

And the Lord *Clarendon* ſays, " All Government ſo much de- " pends upon the *Conſent* of the People, that without their *Conſent* " and *Submiſſion*, it muſt be diſſolv'd. *Survey of the* Leviathan, *p.* 45.

The Author of the *Temple* of Peace, makes the moſt Abſolute Submiſſion a Pact, and as the ground of it is the avoiding a greater Evil, it implies, that tho no Terms are expreſs'd, the Inhumanity and Tyranny of a Conqueror may work a diſcharge: however we have no need of following that Implication, the Contract between *W.* 1. and the People being as expreſs and as conditional as can be deſir'd. For, Gemeteceenſis de Ducibus Norm. *lib.* 6. *c.* 37. Walſing. Hypod. Neuſtriæ, *f.* 436. Sim. Dunelm. *f.* 195. Hoveden, *f.* 450. Flor. Wigorn. *f.* 634, 635. 2 Sam. 5. 3.

2. Every *Election* of a King truly ſo call'd, is an Evidence of a Compact; but ancient Authors tell us, that *W.* 1. was elected King, nay they are expreſs that he was receiv'd upon a mutual Contract, and that *Fœdus pepigit*, he made a League with the People; which comes to the ſame thing with what the Holy Writ records of King *David*, " That the People made a League with him.

King *William*'s Coronation-Oath was the ſame with that which was taken by his *Saxon* Predeceſſors, except that the Circumſtances of that time requir'd an additional Clauſe for keeping an equal hand between *Engliſh* and *French*. 'Tis not to be doubted, but that the *Norman* Caſuiſts inform'd him that this related only to legal Juſtice, but that in matters of Grace and Favour he was left at large. How much ſoever he might have ſtrain'd in this or other matters, I am ſure he was far from acting ſo arbitrarily, as ſome have induſtriouſly repreſented him; I will not ſay on purpoſe to encourage ſuch Actions *Lord* Clarendon's *Survey of the* Leviathan, *pag.* 109, 148, 149. æquo jure. Vid. inf. *ſecond Part.*

Actions in other Princes: And it is yet more certain, that whatever Right either he, or any Prince under him enjoyed, came from the Compact, not from the breach of Faith.

Vid. inf. 3. If the *Compact* were not ſufficiently expreſs'd at the firſt, at leaſt it was made ſo by his ſeveral Confirmations of the *Confeſſor*'s Laws, which he receiv'd with that very Clauſe, which ſhews in what caſe he would ceaſe to be *King* of *England*.

4. He neither at the beginning, nor in the courſe of his Reign, pretended in the leaſt to be a Conqueror, but always inſiſted upon Title, which, as I ſhall ſhew, was ſuch as was not diſputed in thoſe days [the Choice of the People] and this before his Victory over *Harold*; who was always look'd on as an Uſurper; not having been ſet up by a true Choice of the People, but crown'd by a Surprize, and contrary to that Election and Deſignation of a Succeſſor to the *Confeſſor* made in his Life-time, who, *with the Conſent of the Nation*, had ſent a Solemn Embaſſy to the *Norman* Duke to aſſure him of the Succeſſion.

Vid. inf. *ſecond Part.*

Vid. inf. Vid. Leges *W.* 1. de fide & obſequio erga Regem. 5. If *William* I. did gain the Right of a Conqueror, it was perſonal, and he never exacted this for his Heirs, as appears, not only by his Declaration when he came to die, but by the Fealty, or Oath of Allegiance, which he requir'd in his Laws.

Lord Clarend. *Survey*, p. 51. 6. If our Anceſtors had made as abſolute a Submiſſion to *Will.* I. as ſome pretend; in the Judgment of the Lord *Clarendon*, it would not extend to us: "For, ſays he, if it can be ſuppos'd that any "Nation can concur in ſuch a Deſignation, and deveſting themſelves "of all their Right and Liberty, it could only be in reaſon obli-"gatory to the preſent Contractors: Nor does it appear to us, "that their Poſterity muſt be bound by ſo *unthrifty* a Conceſſion of "their Parents.

The King's Oath is the real Contract on his ſide, and his accepting the Government as a Legal King, the virtual one; and ſo it is *vice verſâ*, in relation to the Allegiance due from the Subject.

Jovian. *p.* 244. Thus far the Author of *Jovian* is in the right; "*As in the Oath* "*of Allegiance the People ſwear nothing to the King, but what they* "*are bound to perform unſworn*; *ſo the King in his Coronation-Oath*, "*promiſes nothing to the People, but what in Juſtice and Equity he is* "*bound to perform unſworn.* Upon which account I will yield to *Saravia*, That in Hereditary Kingdoms the Coronation-Oath confers no new Right; and therefore there may be a King before his Coronation: Yet we muſt attend to *Grotius* his Rule, who rightly obſerves, That Succeſſion is only a continuance of that Power which the Predeceſſor had; ſo that if the firſt Poſſeſſor comes into Power qualified by expreſs Contract, this binds the Succeſſor, and he is to be thought to come in upon thoſe Terms.

Vid. Dr. *Stillingfl.* Irenicum *p.* 132, 133. Saravia de Imperii authoritate, *f.* 221. Grotius de jure Belli & Pacis, *p.* 59. Succeſſio non eſt titulus Imperii ſed veteris continuatio

Lord Clarendon's *Survey*, p. 74. *The Deſcription which* Samuel *made of the exorbitant Power of Kings, was rather to terrify them from purſuing their fooliſh Demand, than to conſtitute ſuch a Prerogative as the King ſhould uſe, whom God would appoint to go in and out before them; which methinks is very manifeſt, in that the worſt of Kings that ever reign'd among them, never challeng'd or aſſum'd thoſe Prerogatives; nor did the People conceive themſelves liable to thoſe Impoſitions, as appears by the Application they made to* Rehoboam, *on the Death of* Solomon, *That he would abate ſome of that Rigor his Father had exercis'd toward them: the raſh Rejection of which, contrary to the Advice of his wiſeſt Counſellors, loſt him the greater part of his Dominion; and when* Rehoboam *would by Arms have reduced them to Obedience, God would not ſuffer him, becauſe he was in the fault himſelf.*

Nay,

Nay, even Dr. *Whitby*, who to ſave the Credit of ſome of his Brethren, rather than the Reputation of the Government, argues as if our King were barely King *de facto*, yet ſays, he *does by no means condemn thoſe Writings which plead for taking the impos'd Oath upon ſuch grounds as do more fully juſtify the Title of our preſent Governours.* And himſelf, in anſwer to them who laugh at the Notion of an Original *Compact*, ſhews very particularly that *W.* 1. was received upon *Compact*, and that the ſame *Compact has continued*, and been renew'd *by our ſucceeding Kings.* *Conſideration: humbly offer'd for taking the Oath.* Pref.

One of the Terms before the time of *W.* 1. as appears by the *Mirrour*, was that the King ſhould *ſuffer Right*, or *Juſtice*, as well as his Subjects: And St. *Edward*'s Sword, called the *Curtana*, carried before our Kings at their Coronation, was in the time of *H.* 3. as will afterwards more particularly appear, a known Emblem and Remembrancer of this, of the ſame nature with that Boy, ordered every Morning to put *Philip* of *Macedon* in mind of his Mortality. But ſurely whoever was entitled to carry the *Curtana*, or to uſe a judicial Power in ſuch Caſes as above, how much ſoever they continued their Allegiance to the King's Authority, could not well be ſaid to retain it to his Perſon. Vid. inf.

Dr. *Brady* indeed ſays, *There never was any Pact between King and People, no Fundamental Terms of Government agreed between them; nor indeed*, ſays he, *ever was there, or is it poſſible for any ſuch thing to be in any Nation of the World. Matter of Fact, ſo long as we have any Memorials of it in theſe Kingdoms, ſhews to the contrary.*

If the Matter of Fact here could ſhew it not poſſible in any other Kingdom, his, might paſs for an *univerſal Hiſtory*; but if the Authorities in this *firſt Part* do not take off from the Doctor's Credibility in this Point as far as relates to *England*, I will undertake before I have done with him in the *ſecond*, where his Notions fall more directly under Conſideration, to ſhew, that he deſerves little more Credit, than when he made my Tract maintaining the Rights of the Commons of *England* to be repreſented in Parliament, an Evidence of my being in a Plot againſt the Government. Vid. inf. *ſecond Part throughout.* Jani Angl. facies nova. Dr. Brady's *Introd. to his compleat Hiſtory.*

CHAP. IV.

The ſecond Head of Poſitive Law. The eſtabliſh'd Judicature for the Caſe in queſtion implied, if not expreſs'd, in the Confeſſor's *Law, and aſſerted in Parliament* 12 R. 2. *with an account why the Record then inſiſted on is not now to be found. Our* Mirrour, *the foreign* Speculum Saxonicum, Bracton *and* Fleta *explaining the ſame. The Limitation of that Maxim,* The King can do no Wrong. *Precedents from* Sigibert, *King of the Weſt Saxons, to the Barons Wars in the time of King* John, *confirm'd by occaſion of an Objection to the inſtances in the* Northumbrian *Kingdom. How far this Monarchy was reputed Hereditary or Elective before the time of W.* 1. *there touch'd upon. Inſtances of the Peoples Claims of their Rights in the times of* W. 1. W. 2. H. 1. *King* Stephen, H. 2.

Leges St. Edward. ſup. vid. ib. Rex debet omnia rite facere in regno ſuo & de judicio Procerum ſuorum.

THere was and is an eſtabliſh'd Judicature for the great Caſe in queſtion, as is implied by that part of St. *Edward*'s Laws above-mention'd, which ſuppoſes ſome Judg or Judges in the caſe: and thoſe Laws inveſting the *Proceres* with the ſupream Judicature, withholds not this from them. And the ſame Laws declare that a *Folcmot*, or an Aſſembly of the People of every County, as it is there explain'd, was to meet every firſt of *May*, in a *Common Council*, to provide for the Indemnity of the *Crown of the Kingdom*, and for repreſſing the *Inſolence* of *Malefactors, for the benefit of the Kingdom*, which, as appears from the words, and ſubſequent as well as former Practice, beſides the Opinions of ancient Lawyers, did not except the King himſelf; whatever Care is taken of the *Crown of the Kingdom*. However 'tis certain the Parliament 12 R. 2. referr'd to a known Statute, when they mind him of an *ancient one*, not long before *put in practice*;

Leges St. Ed. Tit. Greve. Vid. *ſecond Part.*

Knighton, f. 2683. *meaning the Caſe of* E. 2.

" Whereby if the King, through a fooliſh Obſtinacy, Contempt of " his People, or perverſe froward Will, or any other irregular way, " ſhall *alienate himſelf from his People*, and will not be govern'd and " regulated *by the Rights of the Kingdom, and laudable* Ordinances " made by the Council of the Lords and Great Men of the Realm; " but ſhall headily, in his mad Counſels, exerciſe his own Arbitrary " Will; from thenceforth it is lawful for them, *with the common* " *Aſſent and Conſent of the People of the Realm*, to *depoſe* him from " the Throne, *&c.* This Law is not now extant, but was not then deny'd; and the Reaſon why it is not to be found, is very evident, from the Articles againſt this *King* ſome Years after: In " the 24*th* Article they accuſe him of cauſing the Rolls and Records, *concerning the State and Government of his Kingdom*, to be " deſtroyed and razed, to the great Prejudice of the People, " and Diſheriſon of *the Crown of the ſaid Kingdom*; and this, " as is credibly believ'd, in favour and ſupport of his evil Governance.

Knighton, f. 1752. *This obſerv'd after me by the Author of the Anſwer to the Popular Objections*, p. 44.

More particularly in the Hiſtorian unmask'd by the ſame Author.

The *Mirror* tells us, That of Right the King muſt have Companions to hear and determine in *Parliament* all Writs and Plaints of Wrong done by the King, *&c.*

Mirror, *p.* 9.

And

And the Learned *Hornius* cites the *Speculum Saxonicum*, of the like Name and Nature with our *Mirror*; the Author of which laſt, was of his own Name: The *Saxon Mirror*, as he ſays, was written before the *Normans* came hither. Hornii orbis imperans, *p.* 196.

" The Juſtices, or private Perſons, ſays he out of the *Speculum*, " neither ought nor can diſpute of the Acts of Kings; yet the " King has Superiors in ruling the People; who ought to put a " Bridle to him: And, *Hornius* ſays, the old *Saxon* Lawyers limit " that Maxim, *The King has no Peer*, to wit, in exhibiting Juſtice; " but in receiving Juſtice, they ſay, he is the leaſt in his King- " dom. Hornius, *p.* 196.

Tho *Bracton* ſeems to reſtrain this Rule to Caſes wherein the King is Actor, *in judicio ſuſcipiendo ſi petat*; *Fleta*, who takes it from *Bracton*, ſeems to correct the Copy, and has it *ſi parcat*, " If he " ſpare doing Juſtice; to which end, both affirm, that he was *crea-* " *ted and choſen King*. And *Bracton* himſelf ſhews elſewhere, that " he means more, by the Reaſon which he aſſigns why the King " ought to be the leaſt in receiving Juſtice, " Leſt his Power ſhould " remain without Bridle. This for certain he ſufficiently explains, when he ſays, " That no Juſtices or private Perſons may diſpute of " the King's Charters and Acts; but Judgment muſt be given be- " fore the King himſelf (which muſt be meant of the King in " Parliament, as appears by a Petition in Parliament 18 *E.* 1. where " *Bracton*'s Rule is received.) But *Bracton* ſays, he has God for his " Superior, alſo the *Law by which he is made King*, alſo *his Court*, " that is to ſay, the *Earls* and *Barons*, for they are called *Comites*, " being as it were Companions to the King; and he who has a " Companion, has a Maſter: Therefore if the King acts without " Bridle, they are bound to bridle him; and *Bracton* in one " place ſays, *In receiving Juſtice, the King is compar'd to the* " *leaſt of his Kingdom*, without confining it to Caſes where he " is Actor. Fleta, *lib.* 1. *cap.* 17. Bracton, *l.* 3. *c.* 9. *p.* 107. Ibid. Bracton, *l.* 2. *c.* 16. *p.* 34. *Vid.* Ryly, Plac. Parl. *f.* 20. Fleta ſupra, Superiores. *So* Mirror, *p.* 9. Ceux Compagnions ſont ore appelles Comites, & in Latine Comitatus; *where he takes in all that come up to Parliament from the Counties.*

This puts a neceſſary Limitation to that Maxim, *That the King can do no Wrong*; that is, not be adjudg'd ſo by the Judges Commiſſaries, or Commiſſion'd Judges, which the *Mirror* uſes in Contradiſtinction to Judges Ordinary, ſitting by an Original Power; yet this does not in the leaſt interfere with the Judicial Power of the High Court of Parliament; and it may be a Queſtion, Whether that Maxim, as receiv'd in the Courts of Juſtice, is ever taken to reach farther than, either in relation to the Remedies which private Perſons may there have, againſt perſonal Injuries from the King; as where 'tis ſaid, The King cannot impriſon any Man, becauſe no Action of falſe Impriſonment will lie againſt him; or rather becauſe of the ineffectualneſs in Law of his tortious Acts. Vid. Mirror, *p.* 209. *He there ſays, Suitors are* Judges ordinary; *and* 274. *ſpeaks of Counties*, & les autres Suitors, *having Juriſdiction in Cauſes which the King cannot determine by himſelf, or by his Judges.* *So Judg*

Crook's *Argument in* Hampden's *Caſe*, p. 59. *Whatever is done to the Hurt or Wrong of the Subjects, and againſt the Laws of the Land, the Law imputeth that Honour and Juſtice to the King, whoſe Throne is eſtabliſh'd by Juſtice, that it is not done by the King, but it is done by ſome unſound and unjuſt Information, and therefore void, and not done by* Prerogative.

But what the Nation, or its *Great Councils* have thought of ſuch Acts, will appear by a long Series of Judgments, from time to time paſt and executed upon ſome of their Kings.

Long before the reputed Conqueſt, *Sigibert* King of the *Weſt-Saxons* becoming intolerable by his inſolent Actions, was expell'd the Kingdom; and *Bromton* ſhews, that this was done in a judicial manner, *by the unanimous Conſent and Deliberation of the Peers and People*; that is, in the Language of latter Ages, *by Lords and Commons in full Parliament.*

Chronica de Mailros, *f.* 137. Anno 756. Bromt. *f.* 770. Cõgregati ſunt Proceres & Populus totius regni & eum providâ deliberatione à regno unanimi conſenſu omnium expellebant.

And eighteen Years after, *Alcred*, King of the *Northanimbrians*, that is, *Northumberland*, and other adjacent Counties, was baniſh'd, and diveſted of his Soveraignty, by the *Counſel* and *Conſent of all his Subjects*. (*a*) Five Years after this, their King *Ethelred* was driven from the Throne and Kingdom, for treacherouſly procuring the Death of three of his Great Men, *Alwlf*, *Cynwlf*, and *Ecga*. Within fifteen Years after this, the People having without Example called back *Ethelred* from Exile, ſlew him without any allowable Precedent, and ſet up in his ſtead *Osbald* a Nobleman, none of the Royal Stock; and he not anſwering their Expectation, they depos'd him in twenty eight days.

Lambart's *Preſ. to* Archaionomia Northumbrorum Imperii magnitudo ea fuit, quæ nunc eſt Eboracenſis, Dunelmenſis, Northumbriæ, Cumbriæ & Weſtmorlandiæ Comitat. atq; reliquam præterea Lancaſtrenſis Com. partem complectebantur. Chron. Mailros, *f.* 138. Anno 774. Sin Dunelm. 106. & 107. Conſilio & conſenſu omnium, Regiæ & Familiæ ac principium deſtitutus ſocietate, exilio Imperii mutavit Majeſtatem. (*a*) Ib. *f.* 108. Anno 779. Mailros, Anno 794. *f.* 139. S. Dunelm. *f.* 113.

Twelve Years after they depoſed their King *Eardulf*, and remain'd long without chuſing any. Sixty Years after they depos'd their King *Osbrich*, and choſe *Ella*, who ſtill ſwerv'd from the Ends of Government. Six Years after they expell'd their King *Egbert*. For ſixty nine Years the Kings and their People agreed, without coming to any Extremities; but then they renounc'd the Allegiance ſworn to King *Edmond*, and choſe *Aulaf* King of *Norway* for their King. *Aulaf* had not reigned ſix Years, when they drove him away; and tho they receiv'd him again, they ſoon caſt him off again, and ſwore Allegiance to the *Engliſh* King *Edred*: Then they rejected him, and choſe *Egric* a *Dane*, with whom their independent Monarchy expir'd, and turn'd into the Government of Earls.

Milros, *f.* 141. Anno 806. Ibid. *f.* 143. Anno 856. degenerem. Ibid. 144, 872. F. 148, 941. F. 148, 947.

I would not be thought to mention thoſe numerous Examples with the leaſt approbation; 'tis certain, they argue great Levity in rejecting, or Folly in chuſing. But if we are believ'd to receive many Laws and Cuſtoms from the *Germans*, from whom we are more remotely deriv'd, much more may the *Engliſh* Monarchy be thought, to partake of the Cuſtoms of the contiguous Kingdoms which compoſe it; and by this frequent Practice the Members of it were ſufficiently prepar'd, to underſtand that part of the Compact, whereby the Prince was oblig'd to *ſuffer Right* as well as his Subjects; and that if he did not anſwer the End for which he had been choſen, he was to loſe the Name of King.

Vid. Mirror ſup. Leges S. Edw.

Indeed

Indeed a very Learned Author, in a Treatiſe for the moſt part unanſwerable, ſeems to ſet aſide all the Precedents within the Kingdom of the *Northumbers*, as if that were of no conſequence to any other part of *England*. *Diſcourſe concerning the Unreaſonableneſs of a new Separation on the account of the Oaths*, p. 15.

" I ſhall not, ſays he, meddle with the Kingdom of the *Nor-*
" *thumbers*, which *alone* was *originally elective*, as appears by *Matthew*
" *Weſtminſter*.

The words to which he refers are theſe;

Anno Gratiæ 548, *Regnum Northanhumbrorum exordium ſumpſit. Cum enim Proceres Anglorum magnis Laboribus & continuis patriam illam ſubjugaſſent. Idam Juvenem nobiliſſimum ſibi unanimiter præfecerunt.* Math. Weſt. f. 101.

" In the Year of our Lord 548, the Kingdom of the *Northum-* Anno 548.
" *bers* began. For when the Great Men of *England* had, with
" much and continual Labour, ſubdued them, they choſe for King
" *Ida* a moſt Noble Young Man.

I cannot underſtand how the ſhewing the Foundation of one Kingdom, in Election, is any Argument againſt the Original Electiveneſs of others within the ſame Iſland: Nay, *primâ facie*, without more of one ſide or other, it gives ground to believe the others to have had the like Foundation: and this Quotation particularly, is ſo far from implying, that this was the only Kingdom, within the Iſle, *Originally Elective*; that it ſupports the Authority of the *Mirror*, which informs us, that forty Princes at the beginning of the *Monarchy* choſe one to reign over them: for this ſpeaks not of the *Engliſh*, as then under one King, or more, in their reſpective Diviſions, but under ſeveral *Proceres*, *Great Men*, or *Princes*; and that part of the Iſland ſeems to have been the firſt which choſe a King: but I know not by what Rule of Logick, it can be gathered from this Paſſage in *Matthew Weſtminſter*, that other Kingdoms which choſe their King afterwards, were not equally *Elective* in their Foundation, tho not ſo ancient, or the time of the Commencement not ſo eaſily to be ſhewen. Certain it is that the *Council* of *Calcuth* in the Year 789, which provides for the Election of Kings, was *Conventus Pananglicus*; and if it took not in the *Northumbrian Kingdom*, as having been diſjoin'd from the reſt till the Reign of *Egbert*, *An.* 827, being 279 Years, it is to be preſum'd that all *England* beſides was included. Nay, this very Author produces Authorities, which prove other Kingdoms here, though their beginning is not ſo well known, to have been as truly Elective as this which he waves. Mirror ſup. Vid. inf. *Vid.* Falkner, p. 329. *This called a* Synod *of all* England. 827. 548. 279. Malmsbury, f. 13.

1. He ſhews, that *Beornred* being ſet aſide by a *Convention of the Nobility and People of the Kingdom of* Mercia, Offa *was choſen King, who was of the Royal Stem, but not the next Heir: And ſo, ſays he,* William *of* Malmsbury *obſerves in the Weſt Saxon* Page 14.

Kingdom after Ina, *that no Lineal Succeſſion was then obſerv'd; but ſtill ſome of the Royal Line ſat in the Throne; and of* Ina *himſelf, that he was rather put into the Throne for his Vertue, than by Right of Succeſſion.*

Diſcourſe ſup. p. 15.

2. He argues, that *if by the Fundamental Conſtitution, Allegiance were indiſpenſably due to the next rightful Heir in this Monarchy.* *Athelſtan*, whom he ſhews not to have ſtood next in the ordinary courſe of Deſcent, would not have been choſen *Magno Conſenſu Optimatum*; and gives ſeveral other Inſtances, wherein he obſerves that *Reaſon of State, and the publick Intereſt ſtill over-ruled this matter.*

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3. He ſhews that *Reaſon of State, and the Publick Intereſt* over-ruled, not only for *Elections*, when the Throne was free from a Poſſeſſor, but even for the removing Kings in Poſſeſſion.

P. 13. An. 454. Vid. ſup. Anno. 756. P. 14. An. 758. An. 854, 867. P. 16. An. 957.

For which he cites the Caſes of *Vortigern* under *the Britiſh Government.* Sigebert *King of the Weſt Saxons.* *Beornred* of *Mercia*, above-mentioned. *Æthelulph* King of the Weſt Saxons, and the eldeſt Son of *Edmund*, who was ſet aſide becauſe *in Commiſſo regimine inſipienter egit*, " He acted *fooliſhly in the Government committed to him.*

After all, he contends that ours is not only *a true Original Monarchy*, but *Hereditary, where the Right of Succeſſion and publick Good did not interfere:* and thus much I readily grant him, but in reſtraining this to Caſes *where there was not a natural or moral Incapacity*, he plainly confines *Reaſon of State, and the Publick Good*, to narrower Limits than before he allowed; for if theſe were to *over-rule*, as he before obſerv'd, then the Queſtion upon Competitions for the Crown, between Perſons of the Royal Family was barely, which of the Competitors, all Circumſtances being conſidered, was moſt likely to advance the Publick Intereſt, of which the People were to be Judges: whereas according to his Limitation, they were bound to take the Perſon who was next in the Line, if he lay not under a natural or moral Incapacity, directly contrary to what he ſhews out of *Malmsbury* of the Weſt Saxon Kingdom, in which, after *Ina, no Lineal Succeſſion was obſerved.* When *Athelſtan*, of his own ſhewing was choſen King, were his Brothers *Edward* and *Edwin* under any *natural or moral Incapacity*? Or, were the Sons of *Edmond Iron-ſide* either way uncapable when *Edward* the Confeſſor was elected? For Confirmation of what himſelf produces upon this Head, I take leave to add one Authority from the Writer of the Life of King *Alfred.*

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Vita Ælfredi *lib.* 1. *f.* 19.

" Many Examples, ſays he, are found among the Saxon Kings, " of a Brother's ſucceeding to the Brother before his Son, eſpe- " cially if the Son had any Impediment from the Infirmity of " his Age, or other Ineptitude for governing: Nay, OFTEN " BY REASON OF LESS MERIT.

I muſt admit, that for the depoſing one actually inveſted with the Regal Authority, the Author's Limitations were to be obſerv'd, tho they were not ſtrictly kept to; and I cannot but think that this Author confounds himſelf for want of this Diſtinction.

Either the frequent Examples of ſetting Kings aſide, whom the Nation judg'd uncapable of the Government, through ſome *natural* or *moral Defect*, or Exceſs, or rather the continual Engagements in war with Foreigners, had ſuch Effect, that from the time of King *Edwin*, Nephew to the *Engliſh* Monarch *Edred*, who was driven out of the Kingdom, *Anno* 957, to the time of *W.* 1. being 109 Years, I find no like Inſtance but one, *Anno* 1014, 52 Years before the ſuppos'd Conqueſt, which was the caſe of *Ethelred*, who *abdicated* the Government and went into *Normandy*, from whence the Nation agreed to receive him again upon Condition, *ſi vel rectiùs gubernaret, vel mitiùs eos tractare vellet*, "if he would either govern more according to Law, or "treat them more mildly. Upon which he promiſs'd *omnia* "*Rege & Populo digna*, All things which become a King to his "People. Flor. Wigorn. *An.* 1014.

For the moſt part during the Saxon Government, a King was but a more ſplendid *General*; nor could he hope to maintain his Dignity, but by hardy Actions, and tender Uſage of his People.

Even *Will.* 1. notwithſtanding the Pretence made in after-Ages of his having broken the Engliſh Spirit, was not only oblig'd to keep within Bounds, as the following Diſcourſe will evince, but to renew his Compact with the People more than once. Vid. *ſecond part.*

Their extraordinary Power had ſlept very few Years after the Death of this reputed Conqueror: for the Sickneſs of his Son *W.* 2. giving the Engliſh Nobility an opportunity of conſulting together, they, almoſt as one Man, were for declaring againſt him, which he timely prevented by fair Promiſes to them. Nay, tho his Brother *H.* 1. came in with the univerſal Applauſe of the Nation, yet a great part of his Navy deſerted him, and declar'd for his Brother *Robert*; not becauſe he was the elder Brother, but becauſe *Henry* was unmindful of that Contract, which gain'd him the Preference, *Quia Rex jam tyrannazaverit*, as the *Hiſtorian* has it, "becauſe the King prov'd a Tyrant. King *Stephen*, his immediate Succeſſor, after Allegiance ſworn to him, had it a while withdrawn for *Maud* the *Empreſs*, Daughter to *H.* 1. but the People ſoon return'd to it again, rejecting her who was nigheſt in blood, becauſe ſhe deny'd them the benefit of St. *Edward*'s Laws. Ed. Lond. Mat. Par. *f.* 19. Rex Willielmus videns omnes pene regni, proceres una rabie conſpiratos, Anglos fortitudine & probitate inſignes, faciles Leges & tributorum lenamen liberaſque illis venationem promittendo, ſibi primo devinxit.

And, as the Author of the learned *Diſcourſe about the New Separation* obſerves, out of Manuſcript written by *Forteſcue*, Chancellor to *H.* 6. *Maud* was ſet aſide, and the *Reverſion of the Crown* *Diſcourſe*, p. 21.

entail'd on her Son, altho ſhe was living, and this was done in Parliament, *Communi Conſenſu Procerum, & Communitatis Regni Angliæ*; "By the common Conſent of the Peers, and *Commons* of "*England:* for which, *Forteſcue*, whoſe Skill and Integrity no Man can juſtly queſtion, *appeals not only to the Cronicles, but to the Proceedings of Parliament.* However this Author will have it, that the Commons were not there, but as repreſented by the *Barons*, being miſled by the general Expreſſions of the Hiſtorians, whoſe Authority he oppoſes to the Rolls of Parliament. Yet for the purpoſe here, it is enough, that this was done by a *Parliament of that Time*; that the Agreement then made was confirm'd by the Oaths of the *Great Men*; and that the Publick Good, which was the *Foundation of the Agreement*, was thought to be the meaſure of the *Obligation of ſuch Oaths.*

Hen. 2. came to the Crown by virtue of an Agreement with King *Stephen*, to which the Nation conſented: for ought appears, he was a ſtrict Obſerver of the Conſtitution of the Government; but being render'd uneaſy by the Refractorineſs of the Clergy, and deſirous that his Son ſhould enjoy that Kingdom, which he found a deſirable Poſſeſſion to them who would keep the Laws; he took his Son into a Partnerſhip of the Care and Dignity: this occaſion'd a Competition for Power, which the Admirers of the traiterous St. *Becket* improv'd into a War, which divided the People; but this, being between two Kings, both in Poſſeſſion, I ſhould not look on as any Precedent to our Point, did I not find that the Allegiance ſworn to the Son, at the receiving him to the Succeſſion, was with a *Salvo*, for that which was due to his Father, as long as he ſhould live, or think fit to reign.

Archbiſhop Parker's Antiquitates Britanicæ *f.* 130. ſalvâ fide Regi patri quamdiu viveret, ac regno præeſſe vellet.

CHAP.

CHAP. V.

The Barons Wars in the time of King John; *That he had abdicated the Government; That he had loſt all means of being truſted by his People. How unwilling they were to engage in a War againſt him. They invite over* Lewis *the Dauphin of* France. *His Caſe a Parallel to the late Abdication. The Vacancy of the Throne inſiſted on by the French King's Advocate, and that thereupon the Barons had right to chuſe another King, of the Blood Royal of* England *as* Lewis *was. Why the Barons fell off from* Lewis. *What the* Homilies *ſay concerning their inviting* Lewis, *ſwearing Allegiance to him, and fighting under his Banner againſt King* John, *conſidered.*

THE Power lodg'd in the People for the publick Good to be ſure was rous'd and juſtified by the Tyrannical Reign of King *John*, who, tho he had effectually *abdicated*, or unking'd himſelf, by his giving up his Crown, as much as in him lay, to hold in Vaſſallage of the Pope, as well as by other his Exorbitances; yet was not ſet aſide till the Nation was neceſſitated to it, by the Succeſs of his Uſurpations and Ravages, to which, as he was encouraged and enabled, by the Influence of the Pope's Authority, over the leſs honeſt, or leſs diſcerning; ſo he thereby loſt all means of gaining Truſt from his People for the future.

The Earls and Barons of *England* having, without any Writ from the King, given one another notice of meeting, demonſtrated that they engag'd not out of any Affectation of Change, but meerly to ſecure thoſe Liberties which were their due by the Conſtitution; for they agreed to wage War, and renounce Allegiance to him only, in caſe that he would not confirm thoſe Liberties, which were contain'd in the Laws of *Hen.* 1. and the ancient Laws of King *Edward* the Confeſſor. Mat. Pa. *f.* 339.

That they might proceed with ſuch Deliberation as became them, they appointed another Meeting for a peremptory Demand, declaring that if he then refus'd them, they would compel him to Satisfaction by ſeizing his Caſtles: nor were they worſe than their words, and their Reſolutions had for a while their deſir'd Effect, in obtaining a Confirmation of their Liberties: which tho they were as forceable in Law before, and his Promiſe to maintain them as little to be credited as ever; yet his open Violation of them after his own ſolemn acknowledging them, and granting that *Petition of Right*, was likely to caſt the greater Load upon him and his Courtiers, when they ſhould act to the contrary; and to take from their ſide numbers of well-meaning Men,

who otherwiſe might be cheated with a pretence of Prerogative.

The Pope, as was to be expected, ſoon abſolv'd the King, and encourag'd him to break thoſe legal Fetters, which was *ipſo facto*, an Abſolution to the People, of more effect in Conſcience, than the *Pope's ipſo facto* Excommunications.

They being thus diſcharged, the wiſer and ſounder part of them, ſtoutly caſting off the Authority both of King and Pope, proceeded to the Election of another King, *Lewis* the Dauphin of *France*.

Mat. Par. *lib.* & Addit. *An.* 1216.

The Account in *Matthew Paris* of a Debate which the French King and his Advocate, or Attourny-General, held with the *Pope's Nuncio*, who would have diſſwaded the *Dauphin's* Expedition againſt King *John*, the Pope's ſworn Vaſſal, is ſo exactly parallel to the Caſe now in queſtion, that many who will allow us no Precedent of ancient Times, will be ready to ſay, that ſome words at leaſt were foiſted in, ſince our preſent happy Settlement.

The French King, as became a Monarch, ſpake his mind in few words, *Si aliquando fuit verus Rex, poſtea Regnum forisfecit per mortem Arthuri, de quo facto damnatus fuit in Curiâ noſtrâ. Item nullus Rex, vel Princeps, poteſt dare regnum ſuum ſine aſſenſu Baronum ſuorum, qui regnum illud tenentur defendere.* "If ever he were "King, he afterwards forfeited his Kingdom by killing *Arthur*, "of which Fact he was condemned in our Court. Beſides, no "King, or Prince, can give his Kingdom without the Aſſent of his "*Barons, who are bound to defend it.*

That is, to preſerve the Kingdom againſt the King who has parted with it, or any Demiſee, as appears by his *Advocate's* Enlargement to whom he left the reſt, after himſelf had granted all Kingly Power to have this implied Limitation.

Mat. Par. Addit. *f.* 281.

The Advocate goes on, addreſſing himſelf to the King.

Domine Rex, Res notiſſima, &c.

"May it pleaſe your Majeſty: It is a thing well known to "all, that *John, called King of England*, was condemned to death "in your Court for his Treachery to his Nephew *Arthur*, whom "he ſlew with his own Hands. And was afterwards by the "*Barons* of *England*, for his many Homicides and other Enor-"mities there committed, *rejected* from reigning over them. Ne regnaret ſuper eos reprobatus, ut ipſum ſolio regni immutabiliter depellerent. "Whereupon the *Barons* waged War againſt him, that they "might drive him from the Throne of the Kingdom, *never to* "*return.* Moreover, the ſaid King, *without the Aſſent of his great* "*Men*, gave his Kingdom *to the Pope and the Church of* Rome, "to receive it again, to be held under the yearly Tribute of a "thou-

" thouſand Marks: And altho he could not give the Crown of " *England* to any one without his *Barons*, he might *demiſe* it, " or deveſt himſelf of it, which as ſoon as he reſign'd, he " *ceaſed to be King*, and the Kingdom was *vacant* without a " King.

Dare non potuit, potuit tamen dimittere eam.

" Therefore the *vacant Kingdom* ought not to have been ad- " miniſtred without the Lords: By reaſon of which the Barons " choſe Lord *Lewis* upon the account of his Wife, whoſe Mo- " ther, the Queen of *Caſtile*, was the only Survivor of all the " King of *England*'s Brothers and Siſters.

What difference between the Kingdoms being vacant without a King, and the Throne vacant?

Vacans itaq; Regnum ſine Baronibus ordinari non debuit, unde Barones elegerunt Dominum Ludovicum ratione Uxoris ſuæ, &c.

" This was ſo true and ſo convincing, that the moſt plauſible " Return which the *Pope's Nuncio* could make to it was, that " King *John* had been ſign'd with the Croſs for the Service " of the Holy Land; and that therefore, by the Conſtitution of " a *General Council*, he ought to have Peace, and be under the " Pope's Protection for four Years.

And you may be ſure that the French King would not interrupt him in his Journey thither, but was well ſatisfied that his Son ſhould ſupply his place in *England*. Who tho he had been received not only as one that reſcued the Nation from King *John*'s enormous Tyranny, but as one that was, in the Right of his Wife, entitled to the Priviledg of the Engliſh Blood Royal; and ſo duly choſen according to the ſtanding Law of this *Monarchy*, as has been mentioned, and will hereafter more fully appear. Yet the *Clergy*, and all who were ſo weak as to be led by them in Civil Affairs, being againſt *Lewis*, as he ſtood excommunicated by the Pope, beſides it having been made known by the Death-bed-Declaration of one of *Lewis* his Confidents, that his Maſter had evil Deſigns againſt thoſe very Men who were the chief Inſtruments in his Advancement, and that he look'd upon them who fought for him as *Traitors*; he, through the uncertainty and indifference of his Friends, more than the ſtrength of his Enemies, was oblig'd to quit the Kingdom to *Hen.* 3.

Vid. ſup. & inf.

Mat. Par. *f.* 384.

This would lead me to the particular Conſideration of the Barons Wars with *H.* 3. were it not needful firſt to remove an Objection againſt their Proceedings with his Father, which tho not founded on the *Hiſtories* of the ſame Age, may ſeem to have weight from the Authority of Divines of later times.

Object.

The *Homilies* paſs this Cenſure upon them.

Homilies, the ſixth Sermon againſt wilful Rebellion, laſt Ed. 383.

" Had Engliſh Men at that time known their Duty to their Prince, " ſet forth in God's holy Word, would *Engliſh Subjects* have ſent " for, and receiv'd the Dauphin of *France*, with a great Army of

" *French-Men* into the Realm of *England?* would they have *ſworn*
" *Fidelity* to the *Dauphin* of *France*, breaking their Oath of Fi-
" delity to their *natural* Lord the King of *England?* and have
" ſtood under the *Dauphin's Banner* diſplay'd againſt the King of
" *England?*

To which I anſwer;

1. That our *Church* pretends not to Infallibility, nor will it be any Imputation upon it to have err'd in relation to Fact, or the Conſtitution of the Government, without regard to which it is not to be ſuppos'd, that the Fathers of our Church would apply the Duty of Subjects *ſet forth in God's Word.* And I doubt not but Dr. *Donne* Dean of St. *Paul's* in the time of *C.* 1. very well underſtood the *Scriptures* and our *Homilies*, and yet he tells us, that ſome ancient Greek States are call'd *Laconica*, becauſe they were *ſhortned* and *limited to certain Laws.* And ſome *States* in our time ſeem to have *conditional* and *proviſional Princes*; *between whom and Subjects there are mutual and reciprocal Obligations, which if one ſide break, they fall on the other.* This he ſuppoſes to be, where-ever there is not a *Pambaſilia* in the hands of one Man; that is, as he explains it, that *Soveraignty, which is a Power available to the main ends.* One of the main ends of Government muſt needs be making Laws, and levying Taxes, if that be not veſted in any ſingle Perſon, he has not the *Pambaſilia*; and if he have not the *Pambaſilia*, according to him he is but a *conditional* or *proviſional* Prince; and if he be a *conditional* Prince, the Obligations between him and his Subjects are *mutual* and *reciprocal*, and the Subjects may take the advantage of a failure on the Prince's ſide.

Pſeudomartyr, *Chap.* 6. *p.* 172.

This being taken from an Authority, cited in the Hiſtory of *Paſſive Obedience* ſince the Reformation, ſhews what Limitations may be put upon thoſe Paſſages in the *Homilies*, which ſeem, like the late King's Declaration to *Scotland*, to require *Obedience without reſerve.*

Hiſtory, p. 40.

Mr. *Falkner*, as appears above, had carried the Point as high as the *Homilies* have done; and yet he admits, that if thoſe *extraordinary* Caſes happen, which, as he contends, ought not to be ſuppos'd, in ſuch Caſes Subjects may reſiſt, notwithſtanding Oaths for *Paſſive Obedience*, without any ſuch Exception in the words.

Vid. ſup. *c.* 2.

2. Whatever Obligation may be upon the *Clergy* from their *Aſſent* and *Conſent*, none is given by the Laity, and they may do all that is requiſite to make them true Members of the Church of *England*, without being concluded by the Opinion of *Churchmen* about Civil Government.

3. Even Clergy-men look upon the very Articles but as Articles of Peace, that they may not diſturb the Government, by publick maintaining what is contrary to them: but ſurely cannot think that they are oblig'd to diſturb the Government, for the ſake of any matter, meerly as it is contain'd in the *Articles*, or *Homilies.*

4. The

4. The Doctrinal matter contain'd in the *Homily*, That a *natural* Lord is not to be reſiſted, may be true; and yet this may not in the leaſt condemn reſiſting an *unnatural Tyrant*: And the Application of their Doctrine to the Caſe of inviting and joyning with *Lewis*, may have been grounded upon a falſe State of the fact, as if King *John* had done nothing whereby he truely *ceaſed* to be King. And that they went upon a falſe ſtate of the Fact, is the rather to be believed, becauſe *Archbiſhop Parker*, by whom we may well gather the ſenſe of theſe Fathers, tho' he admits *King John* to have been an ill Man, and to have joyn'd with the King of *France* againſt his *Natural* Lord and King *R.* 1. yet will have it, that he was juſtifiable in his Actions againſt his Rebellious Subjects, and excuſes his very *Abdication*, in reſigning his Crown to the Pope, as an act of mere neceſſity, being compell'd to it by the Artifice and Turbulency of the Clergy, which he obſerves to have carried on a *ſeparate Intereſt* divided from the Nation ever ſince the *Council* of *Tours* in the year 1163.

Antiquitates Brit. *f.* 148.

Ib. *f.* 131. Eodem annno *Alexander*, Papa Turonenſe Concilium celebravit, cui Arch. & Prelati Angliæ Regis permiſſione & licentiâ interfuerunt, ac à dextris Papæ *Thomas* cum ſuis ſuffraganeis, a ſiniſtris verò Ebor. Arch. cum ſolo Dunelm Epiſcopo ſederunt ibi Capto de Eccleſiaſticâ quadam ſuper regiam libertate pertinaciter retinendâ concilio A Papâ ocyus dimiſſi & in Angliam reverſi ſunt. Poſt hoc Turonenſe concilium cum omnibus pene in rebus *Clerus* ſe *a populo diſjunxiſſet, cepit in Angliâ de Regni atque ſacerdotii authoritate atque vi* multo varioque ſermone diſceptari, factaque perturbatio gravis de *prerogativâ* atque *privilegiis* ordinis *Clericalis*.

But *Stephen* Archbiſhop of *Canterbury*, in King *John*'s time, is to be preſum'd better acquainted with the Juſtice of the Arms on either ſide, than *Archbiſhop Parker*, or the Compoſers of the *Homilies*; upon that King's gathering Forces againſt his Barons, the Archbiſhop tells him, that he would break the Oath that he took at his Abſolution, *ſi abſque judicio Curiæ ſuæ contra quempiam bella moveret*, if he wag'd War againſt any body, without the judgment of his Court; referring, it ſeems, to that part of his Oath, wherein he Swore, *That* "*He would judge all his Men according to the juſt judgment of his Court.*

Mat. Par. *f.* 137.

Nay farther yet, King *John* had brought over Forces againſt his Barons from *Poictou*, *Gaſcony* and *Flanders*, before they had recourſe to any Foreigners.

Mat. Par. *f.* 268.

5. The Caſe of Swearing Allegiance to *Lewis*, cannot be brought as a paralell to Swearing Allegiance to our preſent *King* and *Queen*; becauſe *Lewis* was never receiv'd by the whole *Collective* or *Repreſentative* Body of the Nation, the laſt of which has receiv'd and declar'd for King *William* and Queen *Mary*, upon a ſolemn Judgment given by them the proper Judges of the Fact, That the late King had broken the Original Contract, and thereby ceaſed to be King.

CHAP. VI.

The Barons Wars in the time of H. 3. *particularly conſidered.* H. 3. *Crown'd by a Faction. Had no right but from Election as his Father had. That no right could deſcend to him from his Father.* Lewis, *while here, as much King as* H. 3. *Three expreſs Contracts enter'd into by,* H. 3. *beſides the Confirmations of the Great Charter. Thoſe applied to the conſideration of the Wars. Three of them under ſuch as ſeem like the* Roman Tribunes *of the People.* Dr. Falkner's *Objection againſt thoſe Wars, anſwer'd. The Anſwer confirm'd by a full inſtance, in the time of* E. 1.

TO proceed to the Reign of *H.* 3. who was Crown'd by a Faction at *Gloceſter*, while *Lewis* was in poſſeſſion of *London*, the Metropolis of the Kingdom; That he came not to the Crown as Succeſſor in an *Hereditary Monarchy*, but upon a plain *Election* and *Compact*, with part of the Nation at leaſt, in the Name of the reſt who would come in under thoſe terms, may be prov'd beyond contradiction: For tho' in the Language of the *Homilies*, King *John* were *Natural Lord* to the Subjects of *England*; yet as *Arthur*, who was the next in the Line to King *John*'s Predeceſſor, had the Right of Blood, as far as that could operate, before *King John*, which he inſiſted on in the Fourth of that King's Reign, even while he was his Priſoner; the ſame right had *Eleanor*, *Arthur*'s Siſter, all the remainder of *King John*'s time, and for ſome years during the Reign of *H.* 3.

Mat. Par. f. 278.

2. The Father came to the Crown by virtue of a Free Election of the People, as the Archbiſhop of *Canterbury* told him at his Coronation; wherefore his Election could not inveſt him with more than a Perſonal Right, unleſs more were expreſs'd at the time. But the *Archbiſhop Hubert*, who ſpake in the name of the *Community*, was ſo far from giving the leaſt Umbrage to a Right that might extend to Heirs, that he affirm'd, That "no man is Intituled to ſucceed to the Crown "upon any other account, *previous to the unanimous choice of* the King-"dom, except only the eminence of his Virtue. And being afterwards ask'd why he took ſuch freedom of Speech? He declar'd, That he foreſaw, and was aſſur'd by Ancient Prophecies, That *King John* would *corrupt* the *Kingdom and Crown of* England, *and precipitate it into great confuſion:* And he aſſerted, That he ought to be minded of his coming to the Crown by * *Election*, not by *Hereditary Succeſſion*, leaſt he ſhould take a liberty to act as he fear'd.

Mat. Par. f. 264. 1 *Johan.* Audite univerſi noverint diſcretioveſtra quod nullus prævia ratione alii ſuccedere habet in regnum niſi ab *univerſitate* regni unanimiter invocatâ ſpiritus gratiâ *Electus*, & ſecundum morum ſuorum eminentiam prælectus.

* Ne haberet liberas habenas hoc faciendi.

3. Since therefore what the Archbiſhop fear'd, came to paſs; and that *Contract*, in virtue of which King *John* aſſum'd the Royal Scepter, was notoriouſly broken, How can it be thought that a Right devolv'd upon his Son *H.* 3. eſpecially conſidering the interruption that was made by a Choice of *Lewis*, tho' not Univerſal?

I muſt confeſs, there is no Evidence occurring to me, that *Lewis* was ever Crown'd here; yet conſidering that the Coronation, as is agreed by moſt, is but a Ceremony, the bare want of it would not the leſs argue a breach in the Succeſſion, ſince the ſounder part of the people took

took the benefit of that Forfeiture which *King John* manifeſtly made: and if nothing but an Univerſal Concurrence in this, could juſtify withdrawing Allegiance from him, then it is hardly poſſible for any reſiſting of Tyranny to be lawful at the begining; and he who is forwardeſt in the Cauſe of his Country, muſt be always a Criminal.

But being there is a deep ſilence as to *Lewis* his Coronation, tho he was promis'd by the *Barons* at *London* to be Crown'd immediately upon his coming over; I take the reaſon of the ſilence in this matter to be, That if he were Crown'd in form, it was by the *Laity* alone, becauſe the Pope was faſt to the ſide of *King John*, and his Son; and *Lewis* lay under a Papal Sentence of Excommunication, ſo that the Clergy durſt not Communicate with him in thoſe Acts of Religious Worſhip, which accompany Coronations. But theſe Ceremonies being to be performed by Clergy-men, 'tis moſt probable, that the Laity contented themſelves with the Subſtance, and left thoſe Ceremonies for a more convenient time. But that *Lewis* was in Poſſeſſion of the *Crown* and the *Regalia*, is to be believed, as *London*, with the *Tower*, where they us'd to be lodg'd, had not only been in the Poſſeſſion of his Friends from the beginning, but held ſo till the ſecond Year after *H.* had been Crown'd, as it is to be preſum'd, with a Crown made for that purpoſe. Whether *Lewis* were Crown'd or no, he was as fully received by them that had withdrawn their Allegiance from King *John*, as if he had been Crown'd; and reciprocal Oaths paſt between them. And he was ſo far lookt on as *King*, that *Alexander* King of *Scots* ſwore Homage to him, for the Lands he held of the *Crown* of *England*.

Mat. Par. Illico Coronandus.

Mat. Par.

But certain it is, as the Circumſtances evince, that there were at leaſt three Expreſs and Binding Contracts which *H.* 3. entred into with his People, either beyond, or rather explanatory of what is included in the *Coronation-Oath*, and which *H.* 3. was bound to obſerve, as he would be King of *England*; and theſe, beſides ſeveral Confirmations of the *Great Charter*, *purchas'd* with the *Peoples* Money; and one of the Grants of Aid ſo particularly *Conditional*, that Treaſurers for it were appointed in *Parliament*, and the Money was to be returned, upon the King's not performing the Conditions of the Grant.

1. The Firſt *Contract* which I ſhall obſerve, was that which *Lewis*, perhaps induc'd to it by the Money which he borrowed of the *Londoners*, oblig'd *H.* to, before he would quit his Pretenſions: So that one was plainly the Condition of the other; and as the *Civilians* have it, ran into the other by way of Mutual Conſideration.

Vid. inf.

Lewis, for the reaſons which I before touch'd upon, finding his Intereſt daily decline, thought good to come to terms with *Henry*, whereby *Lewis* oblig'd himſelf by Oath to withdraw from *England*, with all his Followers, never to return; and to uſe his endeavours, that his Father might reſtore all the Rights of the *Crown* of *England*, which he had ſeiz'd on beyond Sea. In *conſideration* of which, *Henry*, the *Earl Marſhal* of *England*, and the Pope's Legat, ſwore to the reſtoring to the *Barons* of *England* and all others, all their Rights and Liberties for which there had been *Diſcord* between King *John* and his *Barons*. This Agreement with *Lewis*, the *Great Council* of the Nation afterwards inſiſted on, 7° *H.* 3. when they urg'd a Confirmation of the *Great Charter*, which they obtain'd not, till 9° of that *King*.

Mat. Par. fol. 400.

F. 423. N°. Diſcord not Rebellion, f. 431.

2. The Second particular Contract, was that of which the *Great Council* or *Parliament* 28° *H.* 3. mind him, and of which they then after much ſtrugling, purchas'd a Confirmation. According to this, among other things, *Four Great Men* were to be *choſen* by *Common Conſent*, as *Guardians of the Kingdom*, to be the ſtanding Council about the *King*, with a very large Truſt repoſed in them. The *Chancellor*, *Treaſurer*, and *Chief Juſtice*, were to be choſen by the like Conſent; and neither any of the *Council*, nor other Officers were to be amov'd, but by Order of the Majority of the *Council*, or in full *Parliament*. This they inſiſt on as ſworn at a *Coronation* of that *King*, *Edmund* Archbiſhop of *Canterbury* being Sponſor for the *King*'s Performance.

28 *H.* 3. referring to 20. f. 864.

This Contract was certainly 20° *H.* 3. at his Third Coronation, when he was Crown'd with his Queen newly married, and had the *Curtein* carried before him, to admoniſh him of the Conſequence of a Breach.

Vid. inf.

That this was 20°, when he was Thirty years old, and in as flouriſhing a condition, as at any time of his Reign, till the chance of War had ſubjected his *Barons* to a more imperious Sway, appears in that the Ceremonies of his firſt Coronation were perform'd by the *Biſhop* of *Wincheſter*, and *Bath* and *Wells*: The ſecond by Archbiſhop *Stephen*, *A°* 1220. in the third year after *Lewis* his departure, which it ſeems, was the firſt time that he was publickly receiv'd for *King* with an univerſal conſent; ſpecial notice being taken, that the Coronation was *in the preſence of the Clergy and People of the whole Kingdom.*

Beſides, *Edmund* was not Conſecrated till the year 1234. 18° *H.* 3. and the Hiſtorian is expreſs, That Archbiſhop *Edmund* perform'd the Ceremonies of the Coronation 20°.

There is farther Evidence, that the Charter mention'd 28° *H.* 3. was granted 20°; for it appears, that the *great Officers* were appointed 20°, according to the Charter which the *Parliament*, 28°, inſiſt on, as granted at a Coronation where Archbiſhop *Edmund* was preſent, and undertook for the *King*'s performance.

Mat. Par. f. 563 Officium Cancellariæ Angliæ & omnia officia ordinata ſunt, quæ Regia ſunt, & Aſſiſe in ſcaccario unde

Matthew Paris writing of the *Twentieth*, ſays, 'The *Office* of the 'Chancery of *England*, and all Offices belonging to the Regal State, and 'Sittings in the Exchequer, were ſetled. Whereupon the *Chancellor*, 'Chamberlain, *Marſhal*, *Conſtable*, took their Seats there by *reaſon of* 'their Offices, as *all Barons* at their Creation had their Foundation in 'the City of *London.*

Cancellarius, *Camerarius*, *Mareſchallus*, *Conſtabularius*, ſibi ibidem ſedem ſumpſerunt, ratione Officii; ſicut Barones omnes in ſui Creatione Fundamentum in Civitate Londinenſi unde quilibet eorum ſuum ibi locum ſortitur. Vid. Flet. lib. 2. cap. 26.

Vid. inf. 2d part.

This Right of Places at *London*, in which 'tis plain *Weſtminſter* was then included, ſeems to imply a Reaſon why the Acts of the *Barons* at *London*, paſt both at home and abroad, for the Acts of the *Baronage* of the Kingdom. Hence the King of *France*, *Lewis* his Father, lookt upon their Invitation of his Son, as the Binding Act of all; accordingly he both demanded and had Four and twenty *de Nobilioribus Regni*, 'of the Chief Nobility of the Kingdom, as Hoſtages for their performing what they had promis'd his Son, which was the Crowning him King of *England.*

Mat. Par. f. 373 Implorantes Patrem ut filium mitteret in Anglia regnaturum & Filium ut veniret illico Coronandus.

3. The

3. The Third particular Contract was contained in the Proviſions at *Oxford*, 42° *H.* 3. which Proviſions are Printed at large in the *Annals of Burton*, and referr'd to in many Records now in the Tower; but the Record of the Proviſions has been imbezled ſince Mr. *Selden*'s time, whoſe Abridgment of them I have ſeen. There had been a Parliament that year at *London* met on *Hoke-Tueſday*, a fortnight after *Eaſter*: at that Parliament the King demanded Money, the Parliament a redreſs of Grievances; but nothing being concluded on, the Parliament was Adjourn'd to *Oxford*; the Barons having promis'd to give the King Supplies if He would Reform the State of the Kingdom; which condition the King accepted of, promiſing that the State of the Kingdom ſhould be *Reform'd by Twelve faithful perſons of his Council, choſen* in that Parliament at *London*, and Twelve others *to be choſen* by the *Barons*.

Vid. Annales Burtonenſes. f. 412. Rot. Par. 42. H. 3. m. 3. Mat. Par.

The Parliament meeting at *Oxford* according to the Adjournment, Twelve were choſen by the Earls and Barons, to be added to the Twelve before choſen of Counſel with the King: Theſe Twenty four choſe Four of their own Number, who named Fifteen to be a ſtanding Council to the King. And among the Regulations, beſides the choice of *Officers*, and the Cuſtody of the King's Caſtles, it was provided, That there ſhould be Three *Parliaments* every year, the firſt at the *Octaves* of St. *Michael*, the ſecond in *Candlemas* week, the third the firſt day of *June*. To theſe Parliaments, Twelve *prodes homes*, honeſt legal men, were to come, for ſparing the coſt of the *Commons*; and at other times when the King ſent for them, upon occaſion *to treat of the buſineſs* of the *King* and the *Kingdom*: and the Community were to hold *for eſtabliſh'd* what theſe *Twelve* ſhould do.

Ke Treis Parlements ſeint par. An.

Theſe might ſeem not to have been Parliaments to make Laws, but Ordinances, or Proviſions in the Intervals, and for ſparing the trouble of more numerous Aſſemblies; that they were but ſuch as were known in after days by the name of *Great Councils*, diſtinguiſh'd from *Parliaments*, would ſeem by a Record of the time, which is a Commiſſion to *Four Knights*, choſen according to the Proviſions then made, by Juries duly returned, to enquire into all Abuſes, Enormities, and Tranſgreſſions within the County of *Dorſet*, in the ſame form with others in the reſpective Counties throughout *England*. The Inquiſitions were to be returned at the *Octaves* of St. *Michael*, the firſt Parliament, appointed by thoſe *Proviſions*; and this was at that very time to be brought to *Weſtminſter*, as one would think, to be delivered into *Parliament*; but it is in the Record ſaid only, *To be delivered to our Council.*

42 H. 3. m. 3. De Inquiſitionibus faciendis per ſingulos Comitatus. *Rex Aluredo* de Lancaſter, Joan. de Rochford, Joan. de Stroda, Will°. de Raymes, de Com. Dorſ. cum nuper in

PARLIAMENTO noſtro apud Oxon. *Communiter fuerit ordinatum*, &c. Et inquiſit. inde fact. ſub ſigillis veſtris & ſigillis eorum per quos facta fuerint, deferatis apud Weſtm. in Octavis S^ti. Mich. in propriis perſonis veſtris *liberand. Conſilio noſtro*, ib.

And I find that Writs iſſued out after the Parliament at *Oxford*, declaring, That all things provided or to be provided by the King's *Council*, and the greater part of them, who were choſen by the *King*, and the *Community* of his Realm, ſhould be held firm and eſtabliſhed, and requiring all men to *ſwear* to hold and maintain, the Eſtabliſhments made, or to be made by the ſaid *Council*.

Rot. Par. 42 H. 3. m. 1. Nus volens & otroiens kece ke noſtre *Conſel* & la greignure partie de eus ki eſt eſluz par nus & la *commune* de noſtre Roiaume a fet ou fera a honir de dieu & noſtre fol & pur le profit de noſtre Roiame ſicum il ordenera ſeit ferm & eſtabli in touts choſes a tuz jourz. Commandons a tuz noz faus & leaus en la fei kil nous devient kil fermement teignent & jurent a tenir & meintenir les eſtabliſments que ſunt fet, ou ſunt a fere par *la dit Conſeil.*

Vid. Flet. Habet Rex. Conſilium ſuum in Parliamentis, &c.

But upon farther conſideration, I find that *Council* was the King's Council in Parliament, and thoſe Knights who were the *Inquiſitors* for the *Counties*, were not only oblig'd to come to deliver in their Inquiſitions, but their Conſent was requiſite to what the King ſhould ordain by his Council in Parliament, which then were a ſelect number choſen as aboveſaid, ſince, as it ſhould ſeem, all the Lords. Certain it is, there are Writs upon Record for the Expences of thoſe Four Knights for every County, as ſince there have been for Two.

Clauſ. 42. H. 3. m. 1. dorſo. Quia Robertus Cambhen & ſocii ſui de Comitatu Northumb. de precepto Regis venerunt ad Regem apud Weſt. &c. pro quibuſdam negotiis Communitatem totius Communitatis præd. tangentibus. Mandatum eſt. Quod prefatis quatuor militibus de *Communitate* præd. rationabiles expenſas ſuas in eundo & redeundo habere faciat. *In another of the ſame time to* Huntingtonſhire, *they are ſaid to have appeared* coram Conſilio noſtro apud Weſtm. in *Parliamento*. *Vide of this at large, in the 2d part.*

The obſerving of the above-mentioned Contracts, will give light to that Judgment which may by us at this diſtance be paſt upon the Wars between *H.* 3. and his *Barons*; and not to mention any ſmall diſturbances, and the Violations of the Rights of particular men, and what they did in defence of them; I find *H.* 3. four times oppoſed by the People in Arms, in Three Wars, and a Fourth riſing, which wanted only Numbers on the King's ſide, to make it a War; all manag'd under *Heads* formally choſen, or ſeeming to have claim to the Conduct, by virtue of their *Offices*.

1. The firſt was under *Lewis* the *Dauphin* of *France*, whom the *Barons* at *London* had choſen for King; in this there was one King againſt another, both ſtanding in truth upon the ſame title, the choice of the People; *Lewis* had the greater part of the Chief Nobility on his ſide, how much ſoever the Pope's Thunder might have frightned the more ignorant Vulgar, and prevailed upon their intereſted *Guides*.

2. The Second was under the Conduct of the *Earl of Cheſter*, named firſt, as 'tis to be ſuppos'd, for the reaſon before ſhewn.

The occaſion of the Inſurrection began *A°.* 1223. 7°. of that King, when he being Seventeen years old, obtain'd a Bull from the Pope, declaring him of full Age, and enabling him to order the Affairs of the Kingdom, chiefly by the Counſel of his Domeſticks, that is, ſuch as he ſhould chuſe, turning out thoſe Officers which either had Hereditary Rights, or had been choſen in Parliament, according to what was inſiſted on at his Coronation 20°. as matter of Right; wherefore his aſſuming all the Power into his own hands, and countenancing the Exorbitances of *Hubert de Burgh*, Chief Juſtice of *England*, (who indeed, as appears upon his Defence afterwards, when he came to be impeach'd, had been choſen in one of King *John*'s Parliaments, but was continued in by *H.* 3. againſt the ſenſe of his own Parliament) ſowed the Seeds of Diſcontent, tho they did not break out into a general Riſing, but all ſeem'd to be quieted by his Confirming the *Great Charter*.

Mat. Par. Addit.

A°. 1224.

Yet ſoon after, when he was in truth of full Age, he was reſolv'd to act as one out of Wardſhip; and in a Parliament at *Oxford* declared himſelf free, and by the advice of *Hubert de Burgh*, cancell'd the Great Charter of the *Liberties* of the Foreſt, as of no validity, becauſe granted in his minority; and forc'd many who had Ancient Grants of *Liberties*, to purchaſe them a-new, at ſuch Rates as the *Chief Juſtice* impos'd. Beſides *Hubert* had adviſ'd the King to act arbitra-

11 H. 3.

Arbitrarily with his own Brother, *Richard* Duke of *Cornwal*, which drove him to ſhelter himſelf under the *Publick-Cauſe*; and glad were the *Great* Men to find his reſentment contribute to ſuch a general demand of Juſtice, as forc'd the King to compliance in a Parliament at *Northampton*. Mat. Par.

3. But by the Seventeenth of *H.* 3. *Peter*, Biſhop of *Wincheſter*, who had ſucceeded to *William* Earl Marſhal, in the cuſtody of the King during his minority, having been ſupplanted by *Hubert* the Chief Juſtice, at laſt put the Dice upon the leſs ſubtile Layman, and reſolving not to fall again for want of flattering his Prince, advis'd him, in order to become Abſolute, to remove his Natural Subjects from the Great Offices, and put Foreigners in their Places; who were brought over in great numbers, and oppreſſed and plunder'd the Nobility upon falſe accuſations and pretences, ſeiz'd their Caſtles, and enjoy'd the Wardſhips of their Children. *An.* 1233. Mat. Par. *f.* 413. Adhuc ſub cuſtodiam Petri Wintou.

This occaſion'd a general inſurrection under *Richard Earl Marſhal*, who, as a *Roman* Tribune of the people, went to the King, and in their name demanded a redreſs of Grievances; but the Biſhop of *Wincheſter* having given an haughty anſwer, juſtifying the King's calling over what Strangers he thought fit, to reduce his *Proud and Rebellious Subjects*, as he call'd them, to due obedience; The *Marſhal*, and the reſt of the Great Men who were Witneſſes to that inſolence, Swore to ſtand by one another to the laſt extremity, in the Cauſe of their Country: But the Earl of *Cheſter*, another *Tribune* here, ſold his Country for a Sum of Money. The *Marſhal* finding himſelf deſerted, was obliged to have recourſe to *Leolin* Prince of *Wales* for aid. Upon this the King Proclaim'd him Traytor: But in a Parliament held at *Weſtminſter*, at the latter end of that year, tho' the Earl Marſhal was abſent, and in Arms, the Parliament advis'd the King not to Baniſh, Spoil, or Deſtroy his Subjects without *Legal Proceſs*; nor to call them Traytors, who *endeavour'd the Peace of the Kingdom, and by whoſe Counſels the Government ought to be managed.* 9° Octob. A°. 1233. Mat. Par. *Laſt Ed. f.* 388.

Which was a full juſtification of the Arms taken by the *Marſhal*. Nay, the Biſhops proceeded ſo far, as to Excommunicate the Biſhop of *Wincheſter*, and others the King's Miniſters, and to lay upon them the imputation of diſturbing the Peace of the Kingdom.

The *Marſhal* carried all before him with univerſal applauſe. The Bp. of *Wincheſter* and his Accomplices were puniſhed in a Parliament held at *Candlemas*. The King having ſent to treat of Peace with the *Marſhal* and Prince *Leolin*, the evil Counſellors, which were the *Marſhals* chief cauſe of Complaint being removed, and his Eſtate in *Ireland* having received great damage from his Enemies, he left *Leolin* to Treat for himſelf and his Friends, and went over to *Ireland*, where he was ſlain by Treachery. The Treaty went on, and among the terms it was provided, That *all Men on the one ſide or the other, who had receded from the fealty of their Lords, and adher'd to the adverſe Party, ſhould return with freedom.* And in the Credential Letters which were ſent to *Leolin* with them that managed the Treaty on the ſide of King *Henry*, He gives him to underſtand, That before that, he had reſtor'd the Lands to all people who had been diſſeiz'd by occaſion of the War Rot. Clauſ. 18. *H.* 3. N. 17. dorſ. Homines etiam illi qui hinc inde receſſerunt a fidelitate dominorum ſuorum & ſe tenuerunt ex adverſa parte liberè revertantur. Rot. Clauſ. 18. *H.* 3. N. 10. dorſ.

between him and the Earl *Marſhal*, where 'tis far from being call'd a Rebellion on the *Marſhal*'s ſide; and at the time of the Treaty, the King found himſelf obliged to proteſt, that he was clear of any conſent to the Death of the *Marſhal*; and that his Seal was, by the great importunity of his evil Counſellours, ſet to Letters, which encouraged the Treachery againſt him, and pronounc'd him a Traytor: But that he was wholly ignorant of the Contents of them.

Vid. *Matthew Paris.*

The Clergy, the Hiſtorians, the People of that Age, in all things extol the *Marſhal*, would never allow him to have been a *Traytor*; and were not his own Defence of himſelf too long to tranſcribe, I ſhould add it as an embelliſhment to theſe Remarks.

Dugdale's Baronage, Vol. 1. f. 752. Simon 16. H. 3. *bore the Title of the Earl of* Leiceſter, *and obtain'd from* Almaric *his Brother, then bearing the Title of Conſtable of* France, *a grant of all the Lands in* England, *with the Stewardſhip of* England. *This came to the Earls of* Leiceſter, *with the Honour of* Hinkley *in* Leiceſterſhire, *from* Petronil *Daughter of* Hugh de Grenteſmenil. Vid. Mat. Weſt. 20 *H.* 3. Simon Montfort *holding the King's Baſon at his Nuptials, as Steward of* England.

The Fourth War, was that under the Great *Simon Montfort*, Earl of *Leiceſter*, another *Tribune* of the People, as he was hereditary *High Steward*, by Purchaſe from his Brother *Almaric*, Conſtable of *France*; the Stewardſhip of *England* having deſcended from their Mother *Amicia*, eldeſt Siſter to *Robert Fitz Parnel*, Earl of *Leiceſter*, who died without Iſſue.

Mat. Par. *f.* 1302.

Whoever reads the Hiſtory of *H.* 3. muſt needs conceive a mean opinion of him; his Cowardiſe was as remarkable as that of one of his *Succeſſors*, who is ſaid not to have been able to contain at the ſight of a drawn Sword; nor could *H.* bear the terrour of Thunder and Lightning; yet when *Simon Montfort* endeavoured to remove one of his frights, he confeſt to him, That he fear'd him moſt: Which was ſuſpected to proceed from *Montfort*'s warm and ſtrenuous purſuing the *Proviſions* at *Oxford*, at leaſt his being for compelling the King and all oppoſers to ſtand to the Counſel of his Barons.

Quod ſcilicet Comes Leyceſtriæ virilius perſtitit & ferventius in perſequendâ proviſione ut ſakem Regem & omnes adverſantes ſuis aſtare conſiliis cogerent, *&c.*

Fol. 1314.

Simon thinking the execution of the *Oxford* Proviſions to be well ſecur'd, went beyond Sea; upon which, *Richard* the King's Brother prepar'd to come into *England*, with intention, and hopes, as it ſhould ſeem, to get them vacated, as being made without conſulting him. But the reſt of the Barons, tho' they were in great fear becauſe of *Simon*'s abſence, would not ſuffer *Richard* to Land, till he had oblig'd himſelf under his hand to take ſuch *an Oath, as the Barons of* England, *who were zealous for the Commonweal*, or *Publick-good*, required; the form of which follows:

Ib. *f.* 1315. Juramentum quale Barones Angliæ reipub. Zelatores exigebant.

"I *Richard* Earl of *Cornwal*, will be faithful and diligent, to reform "the Kingdom of *England* with you, hitherto too much deform'd "by the Counſel of *Evil-men*. And I will be your effectual helper, "to expel the *Rebels* and *diſturbers* of the ſaid *Kingdom*.

Notwithſtanding the ſeeming agreement between the King and People, and Security taken for his performance, Foreigners invited and ſupported by him, became an intolerable burden; and the King being kinder to them than to his People, obtain'd from the Pope

Pope an Abſolution from his Oath, to make good the eſtabliſhment at *Oxford:* But the Barons reſolutely inſiſted upon the Eſtabliſhment; and when the King ſent *Itinerent Juſtices* into *Herefordſhire*, the *Barons* of that County would not ſuffer them to execute their Office there, as being contrary to the Proviſions at *Oxford*; which contrariety ſeems to lye in the King's directing enquiries of miſdemeanours to be judged of in the Countries: when according to what was then Enacted, the Inquiſitions were to be return'd before the *Parliament*, or at leaſt ſuch *Council* as was choſen in a *Parliament*. Mat. Par. *F.* 1322. Ibid.

But the King having procur'd an Abſolution from his Oath, thought himſelf free to act by the Counſels of Foreigners, which his *Great men* would not bear.

Wherefore the Earl of *Leiceſter* and others, met together in Arms at *Oxford*, reſolving either *to dye for the Peace of their Country, or to drive out the Foreigners.* *F.* 1323.

The Foreigners met at the ſame place; but finding themſelves outnumber'd, and that the Lords were reſolv'd to call them to account for their violations of the Government, and make them ſwear to obſerve with them, the *Proviſions* made for *the profit of the Realm*, they fled away by Night; but were purſued by the Barons, and forc'd to quit the Land.

Yet ſoon after this, the *King*, as the Hiſtorian ſays, *by the evil Counſel of ſome, fell from* the *pact* which he had made with his *Great Men*, betook himſelf to the Tower of *London*, and compell'd the Citizens to ſwear to be true to him, without regard to the terms before ſetled, and rais'd what Forces he could. Anno 1260. 44 *H.* 3. 45 *H.* 3.

Whereby it is evident, That he began the War; and that it was an open violation of his Contract made with the people at *Oxford.*

The *Barons* took Arms againſt him in their own defence, and ſent Meſſengers to him, to entreat him to obſerve the Oath which had been ſworn to by all. Which Meſſage he ſlighted at firſt, but afterwards was prevail'd upon to conſent, that he ſhould chuſe one, and the Barons another, to arbitrate their differences, the Arbitrators having power to chuſe an *Umpire*; but that this ſhould be reſpited till the King's Son *Edward* came from abroad. *F.* 1331. Communiter preſtitum.

When his Son came home, he was ſo fully convinced of his Father's being in the wrong, that he joyn'd with the *Barons*, and they reſolv'd together to drive away all the *evil Counſellors*; which the King perceiving, again betook himſelf to the Tower: But an agreement being made with ſome of the Barons by the Queens mediation, the King having left the Tower in the Cuſtody of one in whom he confided, went a progreſs, and found his Barons very quiet and peaceable; but he ſoon diſcover'd that he was reſolv'd to act without regard to the Proviſions at *Oxford:* Violently ſeiz'd ſeveral Caſtles, and coming to *Wincheſter*, diſplaced the *Chief Juſtice* and *Chancellor* which had been conſtituted by the *Baronage*; the Barons met him at *Wincheſter* with a conſiderable Force, upon which the King haſtens again to the Tower of *London.* The *Barons*, one would have thought, were now in a fair way of ſecuring the performance of the laſt Contract made at *Oxford*; but now the Clergy had their Game to play, and acted it like Men who knew how to manage the Nation againſt its intereſt; they keeping a correſpondence with the Clergy of *France*, were Authors of advice to the Barons, *F.* 1335.

That all things in difference ſhould be referred to the Determination of the *French* King; no doubt, making the *Barons* believe, that they had aſſurance of that King's good Wiſhes for the Proſperity of *England*. Both the King and Barons agreed upon the reference; upon which, as was to be expected, the *French* King gave Sentence *for the King againſt the Barons*; and for annulling the *Statutes at* Oxford, *with all Proviſions, Ordinances, and Obligations* thereunto belonging. With this Exception, that he intended not by that Sentence, in the leaſt to derogate from the Ancient Charter of King *John*, granted to the Kingdom of *England*.

Qui habebant ſenſus exercitatos.

Which Exception, ſays the *Hiſtorian*, *oblig'd the Earl of* Leiceſter, *and others of ſound Judgments, to reſolve firmly to keep the Statutes of* Oxford, *which were founded upon that Charter.*

A fidelitate Comitis Leiceſtriæ.

And *Matthew Paris* condemns thoſe as guilty of Perjury, who upon this, receded from their Faith to the Earl of *Leiceſter*, *who fought for Juſtice.* He grew ſo ſtrong, and ſo ſucceſsful, that the King came again to Terms with him, and with the other *Barons*; the Terms were theſe. Mat. Par. *f.* 1327. "*That* Henry *his Brothers Son ſhould be deliver'd* "*out of Priſon. That all the Kings Caſtles throughout* England, *ſhould be* "*put into the Cuſtody of the* Barons. *That the Proviſions of* Oxford "*ſhould be inviolably obſerved. That all Foreigners ſhall depart the* "*Kingdom within a certain time, excepting only them, whoſe ſtay ſhould* "*be permitted by unanimous Conſent, as being faithful to the Kingdom.*

Mat. Par.

But notwithſtanding all *Pacts*, *Promiſes*, and *Oaths*, the King ſends to have *Windſor-Caſtle* beſieg'd, but was diſappointed by the Earl of *Leiceſter*.

After this, a Parliament met at *London*, in which ſeveral deſerted the *Earl*, and adher'd to the King, ſo that he ſeem'd the ſtrongeſt. The Barons writ him a Submiſſive Letter, declaring, That they had no evil Intentions againſt his Perſon, but complain of his *Counſellors*. The King in his Anſwer juſtifies his Counſellors, and ſays, their *Enemies* are his. The Barons on the King's ſide, ſend a defiance to the others, and particularly to the Earl of *Lieceſter*, and to *Gilbert de Clare*, Earl of *Gloceſter* and *Hereford*, undertaking to prove them Traytors in the *King's Court*. Which Tryal the Barons thought they then had Reaſon to decline; but the Barons offer the King 30000 *l.* for his Damage ſuſtained by the War, provided the *Statute of* Oxford may be obſerved; but their Propoſals not being accepted, they came to a pitch'd Battel at *Lewis*, wherein the *King* was totally routed, and taken Priſoner, and his Son *Edward* ſoon after yielded himſelf. Upon which followed a form of Peace ſolemnly ſworn to, while the King and his Son were in Priſon; but the Son making his Eſcape, took the Advantage of a Difference between the Earls of *Leiceſter* and *Gloceſter*, and over-powering *Montfort*, gained an entire Victory at *Eveſham*, by the Death of that Earl; who as *Matthew Paris's Continuator* tells us, laid out himſelf for the *Relief of the Poor*, the *Aſſertion of Juſtice, and the Right of the Kingdom*, and was incited to it by the Famous *Groſthead*, Biſhop of *Lincoln*, who always affirmed, that they who died in that Cauſe, would be *Martyrs*.

1329.

Pat. 48. *H.* 3. m. 6. dors.

Vide *Cave*, de Scriptoribus Eccleſ. *f.* 716. *His Character of that Bp. who animated the Barons.* Vir erat, ut pietatem, vitæ Sanctimoniam, reliquaſq; virtutes Chriſtiano Præſule dignas prætermittam, ingentis animi, acris ingenii, in re literariâ quantum ea ferebant tempora, ad ſummum peſſe apicem evectus, totum encyclopediæ circulum emenſus, in literis ſacris pariter, & prophanis, &c.

The

The King being victorious, no wonder that a Parliament called immediately upon it at *Wincheſter*, condemned the Conquered for Rebels; but it is evident, that more Parliaments juſtified ſuch as then were Rebels for being beaten; and methinks Mr. *Falkner* does not argue with his uſual fairneſs, when he urges the unfortunate *concluſion of the Barons Wars in the later* end of *H.* 3. as *ſufficient* evidence, that *if we look into the Records of the former ages, we may thence diſcern that no Subjects whatſoever of this Realm had, under any pretence, an authority to bear arms againſt the King.* Falkner's *Chriſtian Loyalty*, p. 349.

The *Dictum de Kenelworth*, 51 *H.* 3. mentioned by him as an evidence of the ſenſe of another Parliament, beſides that of *Wincheſter*, is plainly an abatement of the rigours of that *Parliament*, and was only a determination and award made, after *Simon Montfort* the younger, had ſubmitted to any terms that ſhould be impoſed, ſaving his Life and Limbs, and excepting perpetual Impriſonment. Vid. Brady's Hiſt. f. 655.

Mr. *Falkner* adds,

'*Anno* 52. The Statute of *Marlbridge* mentions it as a great and hea- P. 351.
'vy miſchief and evil, that in the time of the late Troubles in *Eng-*
'*land*, many Peers and others refuſed to receive Juſtice from the King
'and his Court, as they ought to have done (which is more expreſly
'contained in the Original *Latin*, than in the common *Engliſh* Tran-
'ſlation) *Juſtitiam indignati fuerint recipere per dominum Regem, & cu-*
'*riam ſuam*, prout debuerunt & conſueverunt; and did undertake to
'vindicate their own Cauſes of themſelves. Now to declare that all P. 352.
'Peers, and all other Perſons ought to have received Juſtice only from
'the King and his Courts, and not to revenge themſelves, or be Judges
'in their own caſes; doth more eſpecially condemn the entring into
'War its ſelf, which is an Undertaking founded upon a direct contrary
'Proceeding. And thus we have a ſufficient Cenſure in our *Engliſh*
'Laws, upon that War againſt the King, which thoſe who have plead-
'ed for the Lawfulneſs of Subjects taking Arms, do account the moſt
'plauſible Inſtance for their purpoſe, as our Chronicles can furniſh
'them with.

But to any who conſider that Statute, 'twill appear beyond contradiction, 1. That the rule of ſubmitting to the judgment of the *King's* Court, will be of no ſervice to Mr. *Falkner's* purpoſe; the Court which is preſum'd to be intended, if it relates to the Controverſies between the King and his Barons, being the Parliament, where they *would be Judges in their own caſes*; which Mr. *Falkner* ſays they ought not to be. 2. The Statute of *Marlborough* does not in the leaſt condemn the *Barons* Wars. For Anſwer.

1. The Subject of that Act is to remedy the abuſes of Diſtreſſes, which are matters within the Juriſdiction of the ordinary Courts of Juſtice; and no way extends to the great queſtions of the Kingdom, determinable only in the higheſt Court.

2. The Statute does not call thoſe Wars a time of *Rebellion*, but of *Diſſention* and *Troubles*; ſuitably to which, even in the time of *E.* 1. among the Articles of the Crown, in charge to the Juſtices in their Circuits, one provides for enquiry after them, who have ſubſtracted Suits of Shires, *&c. after the War moved between King* Henry *the Third and his Barons.* Vid. Stat. Marlb. Fleta p. 25.

Tho

Mat. Par. f. 373. 3. Tho the Barons once threatned *H.* 3. That *unleſs he would ſend away the Foreigners, they would all, by the Common-Council of the whole Realm, drive Him and his wicked Councellors out of the Kingdom, and would conſider of making a new King*; yet it appears by the Circumſtances and Events of the ſeveral Inſurrections, that their deſign was only to bring him to reaſon: they ſtill were for continuing him King: and therefore it might not be improper for the Parliament at *Marlborough* to hold, That for all matters of private differences, even while Armies were in the Field, the Courſe of ordinary Juſtice was to go on, and that it was not to be look'd on as a ſtate of War.

This may be enough to remove the Objections made by Mr. *Falkner*, againſt the *Barons* Wars in the time of *H.* 3. which he ſuppoſes to be the moſt plauſible Inſtance brought by them againſt whom he writes; and I take it, that the Reign even of *E.* 1. one of the moſt warlike of our Kings, affords an Inſtance no leſs *plauſible*.

A°. 1297. Knighton f. 2510. Libratas. In the twenty-firſt year of his Reign, he ſummoned all who had twenty Pounds a Year in Land, of whomſoever they held, to attend him at *London* with Horſe and Arms, in order to go with him to *Flanders*. When they met at *London*, he was adviſed to be reconciled to ſome of the *Great Men*, with whom he had been at variance. He complied with the Advice, excuſing himſelf for former *Exactions*, and deſiring their farther Aſſiſtance, ſince what he was engaged in, was *not his own private concern, but the concern of the whole People, as he was their Protector and Defender*. And he intreated them to pray for him, which the Hiſtorian ſays very few did heartily.

Mat. Weſt. f. 430.

But *Humphrey Bohun*, Earl of *Hereford* and *Eſſex*, High Conſtable of *England*, and *Roger Bygot*, Earl Marſhal, withdrew from the King; whereupon he diſcharged them of their Offices, and gave them to others.

Yet the King found himſelf obliged to ſend ſome Perſons to mediate between Him and Them: To whom they declared, That *it was not their own Cauſe alone, but the Cauſe of the whole Community*, which they undertook: For not only They, but the *whole Community of the Land was agrieved with unjuſt Vexations, Tallages*, and *Levies*, and chiefly, *That they were not treated according to the Liberties in* Magna Charta. Wherefore they drew up a Remonſtrance of their Grievances; which if the King would command to be redreſſed, they were ready to follow him to the Death.

Knighton f. 2511.

Knighton f. 2512. The King gave a dilatory Anſwer, excuſing himſelf through the abſence of ſome of his Council; and having deſired them not to do any thing *to the prejudice of Him or his Kingdom*, paſſed the Seas, notwithſtanding the diſſatisfaction that he left behind; concluding, 'tis likely, That that Succeſs which commonly attended him in his Wars, would gain him a more abſolute aſcendant over his People.

The King being gone, the *Conſtable* and *Marſhal*, with their Adherents, forbad the *Chancellor* and *Barons* of the *Exchequer* to iſſue out Proceſs for levying the eighth Peny, which had been granted the King in *Parliament*, and which yet they ſaid was granted without their Conſent, either as they had not due Summons, or were upon juſt Cauſe abſent.

They continuing together in Arms, the King's Son, who had been conſtituted *Vicegerent*, found a neceſſity of giving them ſatisfaction:

to

To which end he calls a Parliament; where through the mediation of the Arch-biſhop, whom *Knighton* bleſſes for it, it was agreed, That the King ſhould confirm *Magna Charta*, and the Charter of the *Foreſt*: That for the future, he ſhould not ask or take any Aid of the Clergy or People, without the good will and aſſent of the *Great Men*. And that he ſhould remit all *Rancor* to them and their *Adherents*. Knighton *f.* 2523. Magnates.

In the Charter, or Act of Parliament which then paſſed, there are theſe Words.

Remiſimus Humfredo de Bown, Comiti Herfordiæ & Eſekes, Conſtabulario Angliæ, Rogero Bygot, Comiti *Norfork, Mareſchallo Angliæ, &c. rancorem noſtrum & malam voluntatem quam ex cauſis prædictis erga eos habuimus, & etiam tranſgreſſiones* [*ſi quas nobis vel noſtris fecerint*] *utque ad præſentis Cartæ confectionem.*

'We have remitted to *Humphrey de Bowne*, Earl of *Herford* and '*Eſſex*, *Conſtable* of *England*, *Roger Bygot*, Earl of *Norfolk*, *Marſhal of* '*England*, &c. the *rancour* and *ill-will*, which we had againſt them for the 'foreſaid cauſes, and alſo all *Tranſgreſſions* or *Offences* [if they have com-'mitted any againſt us or ours] to the making of this Charter.

Here was a quiet concluſion of an Inſurrection managed under two *Tribunes* of the People, whoſe Union had ſuch an effect, that what they did, was not lookt on by the Parliament to be ſo much as a *Miſdemeanor*.

CHAP. VII.

The known Caſes of Ed. 2. *and* R. 2. *touched upon. The power of the people manifeſted in the Wars and Settlements of the Crown, occaſion'd by the Diſputes between* H. 6. *and* E. 4. *Why the inſtances from thoſe times to the late Abdication omitted. The Objections from the Oaths againſt taking Arms, and from the Declaration againſt a Coercive Power over Kings, removed by* Sherringham, *and the Triennial Act,* 16 Car. 1. Pufendorf's *Due Reſtraint of the Power of the People. Inſtances of the like Power in other Nations; particularly* Denmark, Sweedland, *and* Norway, *when under the ſame King. For* France, Hottoman, Seſellius, *the Author of* Les Soupirs de la France eſclave. Bodin *explain'd, and ſhewn to juſtify King* William *in his deſcent hither; and the People of* England *in their aſſerting the true Conſtitution of the Government. For the* German *Empire*, Bodin *and* Conringius. *An occaſion taken from him to ſhew the Antiquity and Power of a Palatine in* Germany *and* England. Gunterus *uſed to ſhew that Office in ſeveral Countries.* Loyſeau *concerning it in* France. *The Diſtinction in the Author of* Les Soupirs, *between Officers of the King's Houſe, and Officers of the Crown: The Antiquity and Authority of the Offices of Conſtable of* England, *of the High Steward, and the Earl Marſhal; which with the Earl of* Cheſter, *have been as ſo many Tribunes of the People.*

TO proceed to *E.* 2. Son to *E.* 1. 'tis certain that the ſentence threatned *H.* 3. was executed upon his Grandſon *E.* 2. who was formally Depoſed in *Parliament*, for his miſgovernment: His Caſe with his next Succeſſor's but one, *R.* 2. by what I have obſerved before, appear to have been no Novelties in *England*. *Walſingham*, f. 107. Rex dignitate regali *abdicatur* & filius ſubſtituitur.

Nor was it long before the like was again put in practice more than once. *H.* 6. being a weak, miſ-led Prince, gave occaſion to *Richard* Duke of *York*, whoſe Line was put by, to cover his deſigns for reſtoring the elder Family, with the pretence of redreſſing publick Grievances. The Crown he was ſo far from pretending to at firſt, that himſelf ſwore Allegiance to *H.* 6. in a very particular manner. But having afterwards an advantage given, by the Diviſions of them who had driven him out of the Land, he in a fortunate hour, with lucky Omens, as was believed, challeng'd the Crown as his Right; upon which there was an agreement ratified in *Parliament*, That *H.* 6. ſhould enjoy it during his Life, and *Richard* and his *Heirs* after him.

Hollingſhead f. 637. Ib. f. 639, 640.

A Crown over a Branch of lights in the H. of Commons, and another from the top of Dover-*Caſtle, falling about the ſame time*, ib. f. 659.

Tho *Richard* Duke of *York*, and his Son *Edward*, afterwards *E.* 4. had ſworn that *H.* 6. ſhould enjoy the Royal Dignity during life, without trouble from them, or either of them; yet *Richard* having been treacherouſly ſlain by the Queen's Army, immediately after the ſolemn Pacification, *Edward*, at the Petition of ſome of the Biſhops, and Temporal Lords, *took upon him the charge of the Kingdom, as forfeited to him by breach of the Covenant eſtabliſhed in Parliament.*

Ib. f. 661.

Yet this gave him no ſure footing; for the popularity of the *Earl* of *Warwick* drove him out of the Kingdom, without ſtriking a ſtroke for it. Upon which *H.* 6. was again reſtor'd to his Kingly Power, and *Edward* was in Parliament declared a *Traytor to the Country, and an Uſurper of the Realm*, the Settlement upon *Richard* and his *Heirs* revok'd, and the Crown entail'd upon *H.* 6. and his *Heirs Males*, with remainders over, to ſecure againſt *Edward*'s coming to the Crown.

Ib. f. 678.

But the Death of the *Earl* of *Warwick* having in effect put an end to King *Henry*'s Power, he was ſoon taken Priſoner, and put to death, as his Son had been before; and then *Edward* procures a Confirmation in *Parliament*, of the Settlement, under which he enjoyed the Crown.

Hollingſhead f. 693.

Thus the Parliament from time to time determined the Controverſie according to the Inclination of the People, or Reaſon of State: And as the power of the People of *England*, or of *Great Men* of intereſt with them, turn'd the ſcales ſometimes one way, ſometimes another; ſo their conſent fixt them at laſt, during the Life of *E.* 4. I might, following the light of Hiſtory, take in the moſt material Occurrences from the Reign of *E.* 4. to the laſt *Revolution*; but tho the unanimity which appeared at the firſt caſting off the former Yoke, made me with chearfulneſs undertake the juſtification of thoſe who have contributed to the Change; yet I muſt needs ſay I am checkt in that freedom, which otherwiſe I might have juſtly uſed in relation to late times; and tho I labour againſt prejudice in what I bring from faithful Memorials of ancient days; yet I hope the prejudice will be free from that heat and paſſion which mixes with mens own concerns, or the concerns of them from whom they immediately deſcend, in *Blood*, or *Parties*.

Object. It may be ſaid, That whatever the *Law* or *Practice* has been anciently, neither can now be of any moment, by reaſon of the Oath required by ſeveral Statutes, declaring it *not lawful*, upon any pretence *whatſoever, to take Arms againſt the King; and abhorring the Traiterous Poſition of taking Arms by his Authority againſt his Perſon.* And

Vid. 13 C. 2. Stat. 2. c. 1. 13 & 14 C. 2. c. 3. 14 C. 2. c. 3, & 4. 15 C. 2. c. 5. 12 C. 2. c. 30.

2. The

2. The Clauſe in the Statute 12 *Car.* 2. whereby it is declared, *That by the undoubted and fundamental Laws of this Kingdom, neither the Peers of this Realm,* nor the Commons, nor both together in Parliament, or out of Parliament, nor the People Collectively or Repreſentatively, nor any other Perſons whatſoever, had, have, or ought to have, any Coercive *Power over the Perſons of the Kings of this Realm.*

Anſwer. Vid. *Chap.* 2.

What has before been obſerved from and upon, Mr. *Falkner's, Chriſtian Loyalty*, might make it needleſs to take notice of the Objection from either of theſe Clauſes, were it not that many either cannot or will not obſerve what lies at the leaſt diſtance.

I ſhall not here inſiſt, in anſwer to the firſt part of the Objection, on the neceſſity of a Commiſſion, and a King, continuing legal in the Exerciſe, as well as Poſſeſſion of Power; nor the difference between the Traiterous Acts of ſingle Perſons, and the Revolt of a Nation; nor yet upon the Authority of the Common Law, whereby a Conſtable, or other Officer choſen by the people, may act without any Authority from the King.

Vid. Juſtin. Pandec. l. 1. tit. 3. Nulla juris ratio, aut æquitatis benignitas patitur, ut quæ ſalubriter pro utilitate hominum introducuntur, ea nos duriore interpretatione *contra ipſorum commodum producamus ad ſeveritatem.*

And for the latter part of the Objection, as [*Coertion*] is reſtrained to the Perſon of the King, the declaring againſt that, is not contrary to the Authorities for diſcharging Allegiance by a judicial Sentence, or otherwiſe, by virtue of equitable and implied Reſervations; provided a tender regard to the Perſon be ſtill obſerv'd. But if proceedings to free our ſelves from his Authority, fall under this [Coertion]; then I ſhall offer ſomething which may remove both this and the other, from being objections to what I have above ſhewn.

To keep to what may equally reach to both Authorities:

I ſhall not urge here, That theſe Statutes being barely declaratory, and Enacting no Law for the future, introduce none; ſo that if the Fundamental Laws ſhall appear to be otherwiſe, the Declarations do not ſupplant them: Nor yet to inſiſt upon a Rule in the Civil-Law, That the Commonwealth is always a Minor, and at liberty to renounce the obligations which it has entred into againſt its benefit, which is the Supream Law.

Vid. Rot. Parl. 39 H. 6. n. 18.

Vid. Cujac. Tom. 4. f. 154. Reſp. circumſcripta in integrum reſtituitur perinde ac pupillus vel adoleſcens, & Vid. Cic. de Legibus. Salus populi Suprema Lex eſto Inter Leges 12. Tabularum, *of which* Tacitus *ſays*, Accitis quæ uſquam egregia, compoſitæ duodecim Tabulæ finis æqui juris. Tacitus Ed. Plant. *p.* 90.

But I ſhall ſtop their Mouths who object theſe Statutes, and maintain, That according to what themſelves receive for Law, the Parliaments which Enacted theſe Declarations, had no power ſo to do, and then the Law muſt ſtand as it did. For this let us firſt hear Mr. *Sheringham*, whoſe Authority few of theſe Men diſpute.

'They that lay the firſt foundation of a Commonwealth, have Au-
'thority to make Laws that cannot be altered by Poſterity, in the
'Matters that concern the Rights both of King and People. For Foun-
'dations cannot be removed, without the Ruin and Subverſion of the
'whole Building.

Sheringham *of the King's Supremacy.* p. 41.

Wherefore admit the Acts had been duely made, according to him, they would be void, if the Fundamental Law were as I have ſhewn.

However, I am ſure I can irrefragably prove to them who will not have a Nation ſav'd without ſtrict form of Law, That the Parliament which made thoſe Acts, had no Power at the time of making them, being by the expreſs words of a former Statute repealed.

Triennial Act 16 Car. 1. Nota, *There was no attempt to repeal this till* 16 Car. 2.

The Triennial Act 16 *Car.* 1. provides in a way not eaſily to be defeated, not only for holding a Parliament once within three years at leaſt; but that *all Parliaments which ſhall be Prorogued or Adjourned, or ſo continued by Prorogation or Adjournment, until the Tenth of* September, *which ſhall be in the third year next after the laſt day of the laſt Meeting of the foregoing Parliament, ſhall be thenceforth clearly and abſolutely diſſolved.* Now ſay I, That Parliament which Enacted theſe Laws, had ſat beyond that time; *Ergo*, &c. Theſe were made in the Parliament next after the Convention which brought in the King, which they I am ſure will not call a Parliament. Wherefore we muſt go back to the firſt long Parliament, which upon their own Rule, *Rex eſt caput & finis Parliomenti*, was diſſolv'd by the Death of *C.* 1. *Anno* 1648. notwithſtanding the Act for making it perpetual, which indeed by the words of it, ſeems only to provide againſt *any Act of the King to the contrary*, without their conſent; but by the Death of the King that Parliament loſt the being which before it had, as it was under him, when it was *Parliamentum noſtrum*, the Parliament of *Charles* 1. and ſo expired *Anno.* 1648. by Act in Law. And perhaps its own breaking up in Confuſion before, was in Law an Adjournment, *ſine die*, working a diſſolution; by either of which, that Parliament was Diſſolved more than three years before the meeting of that Parliament which made the Statute in queſtion; which Parliament Aſſembled, *Anno* 1661. and was *ipſo facto* diſſolved, when it attempted to make thoſe Statutes; it having been continued by Prorogation or Adjournment beyond the Tenth of *September*, in the third year after the Diſſolution of the laſt Parliament of *Charles* the firſt, which was the next foregoing legal Parliament, according to ſtrict form: For the Parliament which brought in *Charles* 2. *Anno* 1660. was not ſummoned by the King's Writs; conſequently the Parliament 1661. having, according to them, no power after it had continued as above; whatever was the Ancient Law in this Matter, remains as it did before thoſe Laws.

Brook tit. Commiſſion, N. 21. Ib. tit. *Officer* n. 25. vid. *Stat.* 17. C. 1. *Every thing, or things done or to be done for the Adjournment, Proroguing, or Diſſolving of this Parliament, contrary to this preſent Act, ſhall be utterly void.* Anno 1647. Vid. *Hiſt. of the Civil-Wars*, f. 207.

If it be objected, That the neceſſity of the times had diſpenſed with the Letter of the *Triennial Act*, as to this Particular:

1. They who would plead theſe Statutes, cannot urge this, ſince they will not allow of greater neceſſity to Authorize the Maintaining and Reſtoring the Conſtitution. But ſurely however neceſſity might ſupport our Laws, it ſhall not ſuch as alter the Conſtitution; but every legal advantage ſhall be taken for reſtoring it.

2. The neceſſity was not abſolute; for the firſt Parliament of *Charles* the Second, might have continued together as long as they could ſit without *Prorogation*, or *Adjournment*, and be good for a day at leaſt; time enough to have Repealed the former Statute as to that part, and to qualify themſelves for a longer continuance.

In ſhort, they with whom our Diſpute is, are either for the unalterableneſs of Fundamentals, according to which, what I have ſhewn remains,

remains, notwithſtanding all efforts to the contrary; or elſe, all of a ſudden they have a mighty Zeal for the ſtrict Letter of the Law, by which that Parliament which endeavoured to alter the *Fundamental Contract*, was, *ipſo facto*, diſſolved before ſuch attempt: However ſince the Queſtion is not about a *Coercive Power* over Kings, but barely concerning Allegiance to them; whenever he who was King ceaſes to be ſo, either by the Act of God, or the Law, the Obligation of Allegiance neceſſarily determins, as the ſubject matter of it fails.

Quum auferetur ratio juramenti, juramentum ceſſat ratione eventus; qui caſus eſt eorum qui juraverunt ſe obedituros Domino aut Principi alicui, qui poſtea ceſſat, eſſe talis. Ameſius de Juramento, lib. 4. c. 22.

But leſt the Liberty allowed in extraordinary Caſes, be *uſed as a Cloak for maliciouſneſs*, I ſhall reſtrain it with the Authority of the Learned *Pufendorf*.

'In Contracts by which one is made ſubject to Another, this 'has the Right of Judging what the Subject is to perform, and 'has alſo a Power conferr'd of compelling him to performance, 'if he refuſes; which Coercive Power is by no means reciprocal. 'Wherefore he who Rules, cannot be called in queſtion for breaking 'his *Contract*, unleſs he either wholly *Abdicate* the Care of the 'Government, or become of an Hoſtile mind towards his People; 'or manifeſtly, with evil Intention, depart from thoſe Rules of 'Governing, upon obſervance of which, *as upon a Condition*, the Al'legiance of the Subjects depends: Which is very eaſie for any one 'who Governs, always to ſhun, if he will but conſider, that the high'eſt of Mortals are not free from the Laws of Humane Chance.

Sam. Pufendorf. de Interregnis. *p.* 272.

Omnem Reipublicæ curam abdicaverit dolo malo.

But that the Judicial power of the people, ſo qualified as above, is not peculiar to *England*, might appear by the Cuſtoms of moſt Neighbouring Nations. For *Denmark*, *Sweedland* and *Norway*, which had anciently three diſtinct Negatives in the Choice of a King, I ſhall refer to *Krantius*, particularly in the remarkable Story of their King *Eric*, who was Adopted Son of the Three Kingdoms, *Anno* 1411. he having provoked his People, by countenancing the outrages of his Officers and Common Soldiers, was oppoſed with Force by one *Engelbert* a *Daniſh* Nobleman, tranſmitted down to poſterity, with the fair Character of engaging in the Publick Cauſe, neither out of Love of Rule, nor greedineſs of gain; but meer compaſſion to an oppreſſed people.

Krantii Hiſt.

This generous undertaking was ſo juſtly popular, that *Eric*, not able to ſtem the Tide, withdrew from *Denmark*, where he uſually reſided, to *Sweedland*. *Engelbert*'s Noble Cauſe found ſo few oppoſers there, that the *King*, as a pattern to *James* 2. privately ran away, and recommended his *Nephew* to ſucceed him. But they told him plainly, he was made King by *Adoption*, and had no Right to ſurrogate another. Himſelf (there not being the inconſiſtency of a different Religion between the Head and *Members* of the ſame Body) they would have received *upon terms*; but he refuſing, the three Kingdoms unanimouſly choſe one of another Family.

Ib. *f.* 188.

For the Authority of the people, even in *France*, inſiſted on no longer ſince then the time of *Lewis* 11. *Hottoman* gives a large proof in his *Franco Gallia*.

Hottomanni Francogallia, *c.* 23.

And I meet with an excellent Treatiſe of the *French* Government, written originally in that Language, by an eminent *French* Lawyer, *Claudius Seſſellius*, ſoon after the death of *Lewis* 12. and dedicated to his Succeſſour, *Francis* 1. This Treatiſe the Learned *German*, *Sleidan*, turned into *Latin*, and Dedicated it to our King *E.* 6.

Sleidani Dedicatio Ed. ſexto Anno 1548. *f.* 263. Vid. Tres Gallicarum Rerum Scriptores Nobiliſſ. A Johanne Sleidano e Gallico in Lat. Serm. converſ. Ed. Francofurti Anno 1578.

Seſel. *f.* 268. Qui tutorio nomine Rempublicam procurant. *f.* 269.

Seſellius, at that time, looked upon *France* as an Hereditary Monarchy, in which he admits, that there may be great inconveniencies through the folly, vice, or minority of a Succeſſour to a good Prince, or the wickedneſs of thoſe who execute the Government during his minority; yet ſays he, 'There are remedies at hand, by which we 'may reſtrain a King Reigning Arbitrarily, and them who have the 'care of one who cannot Govern for want of fit Age; ſo that the 'King may have the Dignity which belongs to him, and yet it may 'not be lawful for him to do what he pleaſes, but what is agreeable to 'Law and Equity. Proviſion is made for this by the beſt Laws, and 'moſt Sacred Eſtabliſhments, which may not be violated without 'great hazard, although ſometimes force is offered to them.

Seſellius, *f.* 269.

He tells us, their Kings have, *as it were, three Bridles, with which their Soveraign Power is reſtrained:* 1. Religion; And if the awe of that is not ſufficiently impreſſed upon him, yet the reverence of ſome Holy Man may prevail; it being *allowable for any Biſhop, or other Eccleſiaſtical perſon of an unblameable life, and in eſteem with the people, to admoniſh him of his Duty*; nor can he uſe any ſeverities to his Admoniſher, *without danger of alienating the affections of his people.* 2. The Juriſdiction of the *Senate* or *Parliament*, whoſe Power, he ſays, is ſuch, that even the King obeys its Decrees: And yet when he wrote, the Parliament of *Paris*, the meer ſhadow of the Aſſembly of the States of the Kingdom, and which in its inſtitution was but a Committee choſen out of them, had through the Artifice and Uſurpation of their Kings, driven out the ſubſtance. 3. The *Polity*, or Laws of the Kingdom, which temper the Regal Authority, this he ſays, is greatly to the Honour of their Kings; *For if they could do every thing, they would be much more imperfect: And as it does not derogate from God Almighty that he cannot ſin, but his perfection is the more illuſtrious, and to be admired for this very reaſon; ſo Kings, when they obey their Laws, deſerve the greater praiſe, and come nigher to perfection, than if they could command all things at their will and pleaſure.*

Ut decretis ipſorum Rex quoque pareat. Vid. Les Soupirs De la FranceEſclave Memoire 8. Hiſtoire de l'origine du Parlement de *Paris*. *Seſellius* f. 270.

Sleidan, in giving an account of *Seſellius* his Book to *E.* 6. ſays:

Sleidani Dedicatio, ad *E.* 6.

'Although theſe things ſeem written in a peculiar manner in rela'tion to the King of *France*; yet they equally belong to all Kings. 'For all Kings are Monarchs, very few excepted: And as they ac'knowledg no Power over them, ſo they deſerve great praiſe, when 'they keep themſelves within the bounds of thoſe Laws, with which 'they Govern their People. And theſe are thoſe Offices which he 'treats of as becoming a King and Prince: *Which if he neglects, and 'thinks himſelf not to be obliged by any Law, he loſes, in the eyes of 'good Men, all Splendor, Reputation, and Glory, and* **the very name 'of King.**

A Modern

A modern *French* Author, who has with great diligence collected the Evidences of the Ancient Government of *France*, ſuppoſes all the deſcendants from the old *Germans*, as the *Francs* and we were, to have had the ſame ſort of Government, and reſemblance of Conſtitutions. Les Soupirs de la France Eſclave Qui aſpire apres la Liberte Ed. Anno 1690. Memoire 6. p. 82.

Among his ſeveral Arguments, to refute the pretenſions of the Court of *France* to Arbitrary Power, one is, That '*nothing of great importance* '*ought to be done within the Realm, but with the advice and conſent of the* '*Eſtates*; inſomuch, ſays he, That the Government of *France* is ra- 'ther *Ariſtocratical* than *Monarchical*; or at leaſt it is a Monarchy tem- 'per'd by an *Ariſtocracy*, **exactly ſuch an one as** England **is**. Memoire 7 P. 97.

The ſum of his Authorities upon this Head, he reduces to theſe particulars:

1. 'The *Eſtates* of the Kingdom may *Chuſe* and *Depoſe* their Kings, 'and by conſequence may Judge them. Ib. p. 110.

2. 'They may Judge between the People and the King.

3. 'They may Judge between King and King, when more than 'one aſpire, and pretend to the Crown.

4. 'They Determine the Differences which Kings have with their 'Subjects.

5. 'They give Tutors to Kings, and Regents to the Realm.

6. 'They diſpoſe of the great Offices of State.

7. 'They make Ordinances, which alone have the Force of Law 'within the Realm.

8. 'They regulate the Affairs of Money.

9. 'They appoint Impoſitions and Levies of Taxes.

10. 'They are to be conſulted upon all great Affairs.

11. 'In fine, They are, of right, to Correct all defaults of Govern- 'ment, even thoſe of which their Kings are Authors.

'By all theſe particulars, ſays he, it appears, that in ſome reſpects 'the States are ſuperiour to the King; for example, when they *chuſe*, '*depoſe*, *judge*, and *correct*, and that in other matters *they ſhare* with the 'King in every part of the *Soveraignty*. He adds, If we have need 'of farther proof, the name *Parliament*, which all our Ancient *Hi-* '*ſtories* give the *Aſſembly* of *States*, may furniſh us with one. This 'is the name which the *Engliſh give this Aſſembly*, *which partakes of* '*the Soveraignty with their King*. *The* French, *and the Ancient* Bri- 'tains *had the ſame Laws*, *and the ſame Language*; *they Governed them-* '*ſelves by* States, *gave the ſame name to their* Aſſemblies: *And with-* '*out doubt they had the ſame Authority*. *Nay*, *it is certain that the* States *had formerly in* France, *the ſame Power that the* Parliaments *have in* England. Soupirs Mem. 7. p. 110.

As this Author makes the Liberties of the *Engliſh* Nation, and the Power of its Parliament, an Argument of the Right of the *French* Nation; *Bodin*, who wrote after their Parliament at *Paris*, had taken the place of the Aſſembly of States, makes *England* a parallel to *France*, *Turky*, *Perſia*, *Muſcovy*, for the abſolute Sove- raignty of their Princes; but that he was little acquainted with the Hiſtory of the Govenment of *England*, appears, in that he ſuppoſes that *Henry*, who procured his Son to be Crowned in his life time, to have been the Son of *W.* 1. Bodin de Repub. lib. 2. c. 4. ed. *A Lyon*, p. 302. Ib. Cap. 3. p. 286.

This was H. 2.

Bodin, *p.* 300. Even where a Prince is the moſt abſolute, he admits, That if *he Govern Tyrannically, he may be lawfully killed by a Foreign Prince; and that it is a noble and magnificent action for a Prince to take Arms to reſcue a people unjuſtly oppreſſed by the cruelty of a Tyrant, as did the Great* Hercules, *who went about the World exterminating the Monſters of Tyrants; and for his high exploits has been Deified: So did* Dion, Timoleon, Aratus, *and other generous Princes, who have bore the Title of Chaſtiſers and Correcters of Tyrants.*

This, ſays he, *was the ſole cauſe for which* Tamerlain, *Prince of the* Tartars, *denounced War againſt* Bajazet *King of the* Turks; *And when he Beſieged* Conſtantinople, *ſaid he came to chaſtiſe his Tyranny, and deliver his afflicted people: And in fact he vanquiſhed him in a pitch'd Battel, in the Plain of* Mount-Stellian; *and having killed and put to flight Three Hundred Thouſand* Turks, *he kept the Tyrant in a Golden-Cage till he died.*

Ib. *p.* 301. *And in ſuch caſe it matters not whether the Virtuous Prince proceed againſt the Tyrant with Force, or Art, or way of Juſtice: True it is, if the Virtuous Prince has taken the Tyrant, he will have more Honour if he make his Proceſs, and puniſh him as a Murderer, or Parricide, or Robber, rather than to make uſe of the Law of Nations againſt him.*

This paſſage in *Bodin* ſhews beyond contradiction, That if he were now alive, and not of the *Romiſh* Superſtition, he would have extolled and juſtified the Heroick undertaking of King *William,* for the delivery of this Nation. But the ground of the juſtification is, That even the moſt abſolute Soveraign may injure his Subjects, as no doubt but he would, if he treated them contrary to natural equity, and Jovian, *p.* 226. his own eſtabliſhed Laws; whereas the Author of *Jovian* having ſet up an Imperial Power above all Political Conſtitutions, ſays, *In this Realm the Sovereign cannot wrong or injure his Subjects, but contrary to the Political Laws:* And by conſequence not at all, if the Political Laws are to give way to the *Imperial.* Wherefore I wonder not to find him a Subſcriber to the late Biſhop of *Chicheſter's* Paper, which condemns Swearing Allegiance to our preſent King and Queen. But *Bodin,* as he juſtifies our King *William* in freeing us from an oppreſſing Monarch, no leſs clears the Subjects of *England* in joyning with him, upon ſuppoſition that the Conſtitution of our Government is not rightly underſtood by him.

Bodin, *p.* 301. 'But, ſays he, as to Subjects, we ought to know whether the 'Prince be abſolutely Soveraign; or whether he is not abſolutely So-'veraign: For if he is not abſolutely Soveraign, it is neceſſary 'that the Soveraignty be in the people, or in the Lords. In this caſe 'there is no doubt but it is lawful to proceed againſt the Tyrant by 'way of Juſtice, if we can prevail againſt him: or by way of Deeds 'and Force, if we cannot have Reaſon otherwiſe: as the Senate did 'againſt *Nero* in one caſe, and againſt *Maximin* in another; ſo that 'the *Roman* Emperors were nothing elſe but Princes of the Common-'wealth, that is to ſay, the Firſt and Chief, the Soveraignty remain-'ing with the people and the Senate. As I have ſhewn, this Common-'wealth may be called a Principality. Altho *Seneca* ſpeaking in the 'perſon of his Scholar *Nero,* ſays, *I alone, among all Men living, am 'elected and choſen to be God's Vicegerent on Earth. I am Arbiter of 'Life and Death; I am able at my pleaſure to diſpoſe of the eſtate and 'quality of any Man. True it is, that in fact he uſurped this Power; but*

'*of*

'*of right the State was but a Principality, where the people were Sove-*
'*raign:* As also is that of the *Venetians*, who condemned to death
'their Duke *Falier*, and put to death others without form or figure of
'Process. Insomuch that *Venice* is an *Aristocratical* Principality,
'where the Duke is but Cheif, and the Soveraignty remains with the
'States of the *Venetian* Noblemen.

'And in the like Case, the *German* Empire, which also is but an
'*Aristocratical* Principality, where the Emperor is chief and first, the
'Power and *Majesty* of the Empire belongs to the *States*, who in the
'year 1296. deposed the Emperor *Adolph*, and after him *Wenceslaus*,
'in the year 1400. in form of justice, as having jurisdiction and
'power over them.

How much soever *Bodin* was mistaken in relation to the Government of *England*, he seems herein less a Stranger to that of the *German* Empire.

'The Learned *Conringius*, in his account of the *German* Judicatures, 'tells us, 'tis difficult to give an account of them for some Ages next 'after the time of the *Francs*. But beginning with the Causes of Kings themselves, whom he shews, according to Ancient Custom, to have been subject to some jurisdiction upon the account of their Government. 'The Causes, says he, of their Kings belonging to the 'administration of the Government, as anciently, so afterwards, were 'frequently agitated in the *Great Councils* of the Kingdom. So the 'Emperor *H.* 4. was accused in a *Great Council*, and by its Authority 'divested of his Royal Dignity. The same befel *Otto* 4. and * *Fre-*
'*deric* 2.

Hermanni Conringii Excercit De Judiciis, *p.* 251.

Ib. *p.* 252.

* *This about the year* 1251. *No new Emperor was chosen till* Anno 1273. *after Twenty two years vacancy.* Prideaux Introd. *p.* 245.

'But, *says he*, Two things sometimes hapned, much differing from 'the ancient Usage. One is, That the Power of the Council of all 'the States, began to pass to the Electors only, after *Charles* 4. had 'without precedent, brought in the Dignity of the *Septemvires*. The 'other was the Arrogance and Usurpation of the Pope.

Novo more *The Duke of* Bavaria, *made an eighth in the last age.*

The Golden Bull of *C.* 4. who, as *Conringius* will have it, brought in the Authority of the Electors of the Empire, provides who shall sit Judg, or *High Steward*, when the Emperor is impeach'd. By that the *Palatine* of the *Rhine* has the like power with that, of which *Matthew Paris* shews the Earl of *Chester* to have carried the sign or emblem, at the Coronation of *H.* 3. 20 of his Reign, *Anno* 1236.

Vid. Apud Cujacium de feudis 4. tom. lib. 5. a. *f.* 602. ad. 1627. Mat. Par. ed. Lond. *f.* 563.

Comite Cestriæ gladium Sancti Edwardi qui Curtein dicitur ante Regem bajulante, in signum quod Comes est Palatinus, & Regem si oberret habeat, de jure, potestatem cohibendi.

'The Earl of *Chester* carrying St. *Edward's* Sword called the *Curtein*, 'as a sign that he is an Earl Palatine, and has of Right, power to '*correct* the King if he go astray.

It appears that this was no new grant to the then Earl of *Chester*; for *Matthew Paris* informs us, that the Great Men at that Coronation, exercis'd *what belong'd to them by ancient Custom, and ancient Right.* That this *Palatine-jurisdiction* was with us before the entrance of the *Norman* Duke, may well be thought by them, who shall consider the Record which I shall afterwards produce, proving that *Hugh Lupus* enjoyed the Earldom of *Chester* in the time of *W.* 1. as heir to *Leofric*; Earl of

Vid. 2*d Part.*

in the Confeſſor's Reign, and that *W.* 1. confirm'd it to *Lupus*, to hold as freely [by the Sword] as himſelf held the Kingdom. The Sword which the Earl of *Cheſter* carried in the time of *H.* 3. being expreſly ſaid to be St. *Edward*'s, is an evidence that it was the ſame which *Leofric* carried in that time, by reaſon of his *Earldom*, and not of any particular Lands: agreeable to what I find in the time of *H.* 3. in Inquiſitions after the death of *Hugh de Veer*, Earl of *Oxford*, to whoſe *Barony*, the Office of *Chamberlain* to the King is found to belong.

But that it may not ſeem ſtrange that I ſhould find a Palatine here before the Conqueſt, when few of the *German* Writers place it higher than the time of our *H.* 3. Mr. *Selden* ſhews out of an Ancient Chronicle, a *Comes Palatii* in *France*, as early as the Reign of *Clothar* 3. about the year 660. And he obſerves upon the paſſage which he cites, That 'the *King and other great Courtiers* ſeem'd to ſit *ſome-* '*time*; *but the chief Authority*, Delegate and Judiciary, was in the 'Count *du Palais*; *and before him, as Chief Juſtice*, were all Suits de- 'termined, Crimes examined, the Crown Revenue accompted, and 'whatſoever done which to ſo great juriſdiction was competent: 'Neither was there, it ſeems, always one only in this Office; but 'ſometime more. That the Juriſdiction of Palatines was known here in the time of *H.* 2. appears beyond contradiction from *John* of *Salisbury*, a Biſhop at that time, who in a Letter to *Nicholas* then Sheriff of *Eſſex*, ſays, 'As other Prelates are called by the Pope into 'part of the care to exerciſe the *Spiritual Sword*, ſo ſome Earls are by 'the Prince taken into Partnerſhip of the Material Sword, as Prelates 'of Worldly Right: And ſome who bear this Office in the Palace, by 'the Authority of Law, are *Palatines*.

Vid. *Titles of Honour*, Ed. 4. Anno 1614. *p.* 242. *This with ſeveral other conſiderable paſſages omitted in the* Ed. f.

Joh. Sarisbur. Epiſt. 263. ſicut, alii Præſules in partem ſolicitudinis a ſummo Pontifice evocantur, ut ſpiritualem exerceant gladium; ſic a Principe, in enſis materialis communionem Comites quidam, quaſi mundani juris Præſules, aſciſcuntur. Et quidam qui hoc Officii gerunt in Palacio, Juris Authoritate, Palatini ſunt.

This fully juſtifies *Matthew Paris*, in ſpeaking with reference to the known power of a Palatine in the year 1236. One hundred and twenty years before the Bull of *Charles* 4. that being in the year 1356. This ſhews that, however it might have been as to the other *Electors* of the Empire, the Power of the *Palatine* was prior to the Bull of *Charles* 4. The Bull it ſelf has *ſicut ex conſuetudine introductum dicitur*, as 'tis ſaid to have been introduced by Cuſtom; this Cuſtom *Conringius* ſuppoſes to have begun in the time of *Frederic* 2. but holds that there was no expreſs Law for it till that Bull. Yet *Frederic* having been coeval with our *H.* 3. whoſe Siſter he Married, it would ſeem very ſtrange if this Power or Office which had been ſo early in *France* and *England*, ſhould have been no earlier in *Germany*.

Titles of Honour ed. A°. 1631. f. 382.

Mr. *Selden* ſhews one *Otho* an *Earl Palatine* in *Germany*, in the year 1154. and an other *Otho*, who ſlew the *Emperour Philip*, *Anno* 1208. and in the Margin refers to *Eginhart*, who wrote the Life of *Charles the Great*, who was Emperor over the *Francs* and *Germans*, for proof that one *Anſelm* was *Comes Palatii*, or Earl Palatine under him, *Anno* 812.

Freherus

Freherus gives an inſtance of the *Palatine*'s Power in the Empire, before the Bull of *Charles* 4. in the Caſe of King *Albert*, threatned to be depoſed for killing his Leige Lord *Adolph*, to whom he ſucceeded, *Anno* 1290. Freheri Orig. Palat. *f.* 113, 119, 120.

With *Freherus* agrees *Gunterus* in his *Octoviratus*, who ſays, That 'the *Palatine* of the *Rhine*, *Major Domo* to the Emperour, is, by Cu-'ſtom, Judge of the Emperour himſelf; or rather in the higheſt mat-'ters, declares the ſenſe of the *Electoral College*. Prideaux *his Introd.* Gunteri Thulemarii Octovirat. cap. 18.

He cites ſeveral Authors to prove the like Office or Power to have been in divers Kingdoms and Principalities; and names *France*, *England*, *Arragon*, *Spain*, *Denmark*, *Poland*, *Bohemia*, &c.

For *France*, *Loyſeau*, who wrote within this *Century*, ſhews this Power to have belonged to their *Major du Palais*; for he owns the Power to have been greater than the *Roman Prefect* of the *Palace* had; and yet he cites the words of the Emperour *Trajan*, giving his *Prefect* a naked Sword, which he enjoyn'd him to uſe againſt himſelf, if he miſgovern'd. And *Loyſeau* ſays, That this dangerous Office was put down by the Kings of the Third Line, that they might perpetuate the Crown in their Family. Loyſeau du droit des Offices ed. Anno 1610. *f.* 409, 410.

But the Author of the *Sighs of France*, ſhews the firſt interruption to the exerciſe of this Office, to have been put by the *States of the Kingdom*, who when *Clothair* preſſed them to conſent to the choice of a *Major du Palais*, in the place of *Warnhier* then lately deceaſed, would not conſent, declaring that *they would not have that charge fill'd.* Soupirs de France Eſclave Mem. 7. *p.* 116.

Loyſeau ſuppoſes this Office to have been ſplit into the *Conſtable*, *Chancellour*, *Treaſurer*, and the *Grand Maiſtre du France*, or *Count du Palais*, which he ſeems to reſemble to an *High-Steward* with us.

The Author of the *Sighs of France* ſhews, that when *Childebert* was choſen King, they choſe *Grimoald* for *Maire du Palais*. And ſays he, Les ſoupirs Mem. 7. *p.* 167.

'Through all our Hiſtory we may always ſee a very clear diſtinction 'between the Officers of the King's Houſe, and thoſe of the Crown: 'This diſtinction remains to this day, as a Monument of the Ancient 'Liberty of the *French*. For we ſay, the Great Maſter of the King's 'Houſhold, the *Great Chamberlain*, &c. But we ſay the *Conſtable of* '*France*, the Admiral of *France*, the Chancellour of *France*: And 'theſe laſt Charges do not dye with the King; whereas the Officers of 'the King's Houſe dye with the King, and may be changed by his 'Succeſſour. The Reaſon of this difference comes from this, That 'that which is given by one King, may be taken away by another: 'But the Officers of the Crown being made by the People, and by the 'Realm, cannot be turn'd out by the King alone. And it is very re-'markable, that theſe Offices *of the Crown*, which the States of the 'Kingdom may give, and which they alone can take away, may ex-'tend to the whole, to the War, to Juſtice, and to the Finances, or 'Treaſury.

In a Book publiſhed in *Queen Mary's* Reign, which at leaſt went under the name of Biſhop *Poinet*, one of our Confeſſors, who fled to *Germany* from the *Marian* Perſecution, ſuch a Power as is above mentioned, is affirmed to have belong'd to the High Conſtable of *England*. *Hiſtory of Paſſive Obedience*, p. 38.

Treatiſe of Politick Power. Anno 1556.

'As God, ſays the Author, has ordained Magiſtrates to hear and 'determine private Matters, and to puniſh their Vices; ſo alſo will 'he, that the Magiſtrates doings be call'd to account and reckoning, 'and their Vices corrected and puniſhed, by *the Body of the whole 'Congregation, or Commonwealth*: As it is *manifeſt* by the meaning of 'the Ancient *Office of High-Conſtable of* England, *unto whoſe Authority 'it pertained*, not only to ſummon the King perſonally before *the 'Parliament*, *or* other Courts of Juſtice, to anſwer, and receive ac-'cording to Juſtice; but alſo, upon juſt occaſion, to commit him to 'Ward.

Theloal, in his Digeſt of Writs, Printed in the year 1579. 21 *Eliz.* Collects what is in the Year-Books concerning Summoning the King.

Theloal's Digeſt tit. Roy. p 71. *This was* H. 3. Vid. 22. E. 3. f. 3. b. Trin. 24 E. 3. f. 55. b 43 E. 3. 22. a. Wilby, *Juſtice.*

Fuit dit. *H.* 22 *E.* 3. que en temps le Roy *Henry* & devant le Roy fuit impled, come ſerroit autre home de people. Mes *Edward* ſon fits ordein, que home ſueroit vers le Roy per petition. Et iſſint dit fuit *T.* 43. *E.* 3. 22. que en temps le Roy *Henry*, le Roy ne fuit mes come comune perſon, car a ceo temps home averoit brief d' entre ſur diſſeiſin vers le Roy, & touts autres maners d' actions come vers auters perſons, &c. Et *Wilby* dit. *T.* 24. *E.* 3. 23. que il avoit vieu tiel briet *Precipe Henrico Regi Angliæ*, *&c.* En lieu de quel eſt ore done petition pur ſa Prerogative.

It was, ſays he, *held*, Hil. 22 E. 3. *that in the time of King* Henry, *and before, the King was impleded as any other Man of his people; but* Edward *his Son ordain'd, That a Man ſhall ſue to the King by Petition. And ſo it was ſaid* Trin. 43 E. 3. 22. *That in the time of King* Henry, *the King was but as a common perſon; for at that time a Man might have a Writ of Entry upon Diſſeiſin againſt the King, and all other manner of Actions, as againſt other perſons*, &c. *And* Wilby *ſaid*, Trin. 24 E. 3. 23. *That he had ſeen ſuch a Writ* Precipe Henrico Regi Angliæ, *in lieu of which, now a Petition is given for his Prerogative.*

Sir Robert Cotton, *of the Conſtable of* England *MS. in the Herald's Office.*

It may be difficult to diſtinguiſh between the Office of the Earl of *Cheſter*, and the *Conſtable of* England, who as Sir *Robert Cotton* held, is Second to the King, and has the Cuſtody of his Sword, the carrying which, as appears by *Matthew Paris*, belonged to the Earl of *Cheſter* by reaſon of his *Palatinate*, and yet at the ſame time *Humphrey de Bohun* Earl of *Hereford*, Conſtable of *England*, was in full poſſeſſion of his Office: 11 *H.* 3. he ſtood up with the Earl of *Cheſter* and others, on the behalf of *Richard* the King's Brother, and was alive and in *England*, 20 *H.* 3. when the Earl of *Cheſter* carried the Sword as of Ancient Right; ſo that one ſeemed to have the right to carry, the other to keep the Sword.

Dugdale's *Bar.* 1. Vol. f. 180.

Vid. *Patent to Earl* Rivers. Temp. *E.* 4. Vid. *2d. Part.*

The Office of *Conſtable* ſeems to have been no ancienter than the the time of *W.* 1. to which the Patents for the Office refer; but the Earldom of *Cheſter* and its Rights were Ancienter: Wherefore one would think that *W.* 1. erected the Office of *Conſtable*, to ballance that of the Earl *Palatine.*

Sir Rob. Cotton, *Of Conſtable*, &c. MS. ſup.

The other Great Officers, the *High-Steward* and *Marſhal*, are eaſily diſtinguiſhable from the *Conſtable*; and as Sir *Robert Cotton* obſerves, the Office of *Conſtable* was of Military, that of the High-Steward of a *Civil* Juriſdiction.

The

The *Marſhal* was in the nature of an *High Sheriff*, to ſee to the Execution of the Proceſs and Judgments of either, and yet had a Judicial Power with both. In ſome Caſes, all three acted with joynt authority, as appears by the moſt Ancient Copies of the *Modus tenendi Parliamenta*, which tho' it has been put into *Latine* ſince the Conqueſt, and has the names of Things and Offices adapted to what was known and in uſe at the time of the Tranſlation from the *Saxon* MS. yet certainly, for ſubſtance, gives a true account of what was before the Conqueſt. Mr. *Selden* ſuppoſes it to have been no ancienter than about the time of *E.* 3. yet confeſſes, that he had from Mr. *Hackwel* a Copy of an *Inſpeximus* 12 *H.* 4. Exemplifying under the Great Seal, moſt of the particulars that occur in the ordinary *Modus* for *England*, fitted for *Ireland*, as ſent thither by *H.* 2. but it would have been very ſtrange, if there ſhould have paſſed an exemplification under the Great Seal, of what was a meer fiction.

Vid. *Stat.* 3. R. 2. *Stat.* 1. C. 2. *Of the Conſtable and Marſhal.*

Flet. lib. 2. c. 60. *Of the Steward and Marſhal.*

So Ryle's Plac. Parl. f. 126. 21 *E.* 1.

Selden's *Bar.* 2*d Part*, c. 5. f. 739

F. 743.

The *Modus* ſays, 'When any doubt or difficult caſe of War or 'Peace happens in the Kingdom, or without, let that Caſe be referr'd 'and brought in Writing into full Parliament, and let it be treated of 'and debated among the Peers of Parliament; and if need be, let it 'be enjoyn'd by the King, or in his Name, to every degree of the 'Peers, That every degree act by its ſelf, and let the Caſe be deli- 'vered to their Clerks in Writing, and in the ſaid place let them cauſe 'the ſaid Caſe to be recited before them; ſo that they may conſider 'among themſelves, how it may in the beſt manner, and moſt juſtly 'be proceeded upon, as they would anſwer before God for the Perſon 'of the King, and their own proper perſons, and alſo the proper per- 'ſons of them whom they repreſent. And let them report in Wri- 'ting their Anſwers and Advice, that all their Anſwers, Counſels and 'Advices on all ſides being heard, it may be proceeded upon accord- 'ing to the better and more wholeſom Counſel. But if the Peace of 'the Kingdom, or the Nation, People, or Commonwealth, be weak- 'ned, by reaſon of diſcord between the King and other Great Men, ſo 'that it ſeems to the King and his *Council*, that the matter ſhould be 'treated of, and amended by the conſideration of all the Peers of his 'Kingdom; or if the King and Kingdom are diſturbed by War; or if 'a difficult Caſe ariſe before the Chancellor of *England*, or a difficult 'Judgment is to be given before the Juſtices and the like; And if it 'happen that in ſuch deliberations, all, or at leaſt the greater part 'cannot agree, then the *Earl Steward*, *Earl Conſtable*, and *Earl Mar- 'ſhal*, or Two of them, ſhall chuſe Twenty five perſons from all parts 'of the Kingdom, *viz.* Two Biſhops and Three Proxies of the Clergy; 'Two Earls, and Three Barons; Five Knights of Shires, Five Citizens, 'and Five Burgeſſes, who make Five and Twenty; and they Five 'and Twenty may chuſe Twelve out of themſelves, and be conclu- 'ded by what they do. The Twelve may chuſe Six, and be con- 'cluded by them; The Six, Three, and be concluded by them: But 'the Three cannot be reduced to fewer without leave of the King. 'And if the King conſent, the Three may be brought to Two, and 'the Two to One; and ſo at laſt their Ordinance ſhall bind the 'whole Parliament; and ſo by coming from Twenty five to One, if 'the greater number cannot agree to an eſtabliſhment, at laſt one 'Perſon, as is ſaid, ſhall *Ordain* for all, becauſe he cannot diſagree

Modus tenendi Parl. Cum dubitatio vel caſus difficilis pacis vel guerræ emergat, &c. Vid. Append.

What that Council was, vid. 2*d Part.*

N^a *a Remedy where equally divided.*

Et condeſcendere in eos.

'from himſelf; ſaving to the King and his *Council*, That they may ex-
'amin and amend ſuch Ordinances after they are written, if they
'can, and will; Provided they do this upon the place *in full Parlia-*
'*ment, and with the conſent of the Parliament, and not out of Parlia-*
'*ment.*

According to which, the *High Steward*, *Conſtable*, and *Marſhal*, being looked on as Hereditary Officers, were entruſted with a means of compoſing the differences of the Nation, when they ſhould happen to be equally divided.

I find the Authority of the *High Steward* and *Conſtable* more expreſs in a Tranſlation of another *Modus tenendi Parl.* agreeing in ſubſtance with that which I have cited. The MS. which I have uſed, ſeems to be of the time of *H.* 7. thô Mr. *Elſing* ſays, That which is in Sir *Robert Cotton*'s Library was written *temp. E.* 2. The Tranſlation of the other was Printed with Royal Privilege in King *James* his time, as I take it; It was done in a very pedantick ſtile, by one *Anthony Buſtard* of *Lyons-Inn.* He that wrote the *Latine* in his Preface, ſpeaks of it as the Order ſetled by *W.* 1. That *Modus* places the Power of chuſing the Twenty five in the *Steward* and *Conſtable:* It adds, That if any of the Miniſters act contrary to their Duty, the King, the *Steward*, and others of the Parliament, may remove them from their Office: And ſays particularly, That the *Steward of England*, with the *Conſtable* and Nobles of the Realm, ſhall ſend to evil Counſellors, willing them to deſiſt from giving Counſel, and entreat the King not to liſten to them; and if they regard not ſuch advertiſement, they were to ſend to the King to put ſuch away from him: And if King and Counſellors neglect ſuch wholſom Advice, then for the *ſafety of the Commonwealth*, it *hath been thought fit and lawful* for the *Steward*, and *Conſtable*, and Nobles, and others of the Commons of *England*, with the King's Banner diſplayed, the King's name omitted, the ſaid Counſellors to take and keep in Cuſtody till the next Parliament, and Seize their Goods, Lands and Hereditaments, until they receive Judgment by conſideration of the *whole Parliament.*

MS. penes Authorem.

MS. penes Authorem.

Pref.

Vid. Append.

There is no more in this, than is warranted by Sir *Robert Cotton*'s Letters in the Herald's Office; part of which ſeem to be taken from a MS. joyn'd to the *Modus* in his Library, under the name of *Fleetwood.*

Sir Robert Cotton, *Of the High Steward*, &c.

The *High-Steward*'s Office, as I have before obſerved, was annex'd to Land, and ſo was the *Conſtable's* of *England*, as appears by our Law-Books in the Caſe of the Duke of *Buckingham*, 6 *H.* 8. who pleaded, That *Humphrey de Bohun*, formerly Earl of *Hereford*, was ſeiz'd in Fee of the *Mannors* of *Hareſield*, *Newnam*, and *Whitenhurſt* in the County of *Gloceſter*, and held them by the ſervice to be *Conſtable of England*, which the Judges allowed of as a good Plea.

4 *Inſt.* f. 127. Dyer, f. 285. b. Kelway, f. 170.

Indeed they held, that thô the King might compel him who had the Land, at his pleaſure to execute the Office, ſo he might at his pleaſure refuſe to have it Executed: But as to that, this being an honorary and profitable tenure by Grand Serjeanty, it is to be conſidered, that the Stat. 12 *Car.* 2. when it took away thoſe Tenures of the Crown which were burthenſom to the Subject, provided that it ſhall not *take away the Honorary Services of Grand Serjeanty.*

Dyer.

12 Car. 2. c. 4.

But

But *H.* 8. thought it ſufficient that he diſclaimed the Service. and the Reaſon of the diſclaimer, was, becauſe it was *very high and dangerous, and very chargeable to the King in Fees*; the laſt part of which ſhewed the Subject's property concerned in the queſtion. Dyer.

Upon the Duke of *Buckingham*'s claim to this Office, *Nevil* ſays it has been a common ſaying, That the *Conſtable of England*, by virtue 'of his Office in ſome caſe, may Arreſt the King himſelf; and there-'fore held it neceſſary that the King ſhould be appriz'd what Authori-'ties belong to his Office. Kelway, *f.* 17.

Fineux, Chief Juſtice, ſays, 'We know of no ſuch Authority to 'belong to any Officer within the Realm [by the Common Law of 'the Land.]

Which he afterwards explains; for being ask'd by the King, upon the report made by the Juſtices of their reſolution for the Duke, what things the *Conſtable* can do by reaſon of his Office? 'Sir, ſays he, this 'Point belongs to your Law of Arms, of which we have no experi-'ence nor cognizance.

This may ſhew what occaſion Cardinal *Wolſey* had to ſtrain a point of Law againſt that Duke, and to have one, who durſt inſiſt upon a Right to be *Conſtable* of *England* by inheritance, to be taken off by an *High Steward* out of Parliament, made for that turn. Vid. *Inf.* 2*d Part.*

And what *Fineux* ſays of the Power of the *Conſtable*, may account for the ſilence of *Bracton*, *Fleta*, and other Ancient Common-Lawyers in relation to the Authority of the *Conſtable* and *Marſhal*; yet *Fleta* ſhews that the *Conſtable* had a Seat in the *Exchequer*, and overlooked Accompts relating to Soldiers, Forts and Caſtles; and gives a ſhrewd hint concerning the *Earl Marſhal*, ſpeaking of the *Exchequer*. Flet. lib. 2. c. 31.

'The Juſtices, ſays he, ſitting there, were all *Barons*, becauſe *Ba-'rons* uſed to ſit in their places, while the Earl of *Norfolk* and Martial 'of *England* had his Place and Seat there as *Chief Juſtice of the King-'dom of England*; whoſe Place the Treaſurer poſſeſſes at this day, but he 'cannot occupy his Office. Fleta, lib. 2. c. 26.

This ſhews, that in the *Exchequer* the Earl *Marſhal* had place above the *Conſtable*; accordingly when 25 *E.* 1. they came into the *Exchequer* to forbid the Levying of the Tax. The Barons in their account of this to the King, ſay, There came to the Bar of the *Exchequer*, the *Earl Marſhal*, and the *Earl* of *Hereford*; and the *Earl-Marſhal* and the others declared they would not ſuffer it to be Levied. Vid. *Append.*

That this Office was of extraordinary Authority, appears by a Record 42 *H.* 3. which ſhews, That the Precept for executing the Proviſions at *Oxford*, were by the King and his *Council* in Parliament deliver'd to the *Earl-Marſhal*; and if we conſider the Authority exerciſed by the *Earls Marſhal*, in the time of *H.* 3. and *E.* 1. with the approbation of *Parliaments*, it may be thought that he was an hereditary Conſervator of the Kingdom, notwithſtanding which, in the 28th of *H.* 3. the Parliament inſiſted upon it, as their right, to have four *Conſervators* choſen by them. Rot. Pat. 42. *H.* 3. *M.* 4. Vid. Mat. Par. 28 *H.* 3.

This Office perhaps is the only one which was enjoyed in groſs, and went along with the name of *Marſhal* till the time of *H.* 3. when *Hugh Bigod*, Earl of *Norfolk*, Married *Maud* the Daughter of *William Marſhal*, Bar. 1. Vol. f. 133.

Marſhal, Earl of *Pembroke*: Sir *William Dugdale* ſays, the firſt mention which he finds of the Name and Family of *Mareſchal*, was in the time of *H.* 1. but in all probability that Name and Office went together from before the time of *W.* 1. I am ſure *Roger Mareſchal* was a very conſiderable Proprietor in *Doomſday-Book*. Indeed the firſt conteſt about the Office was in the time of *H.* 1. when it was adjudged to belong to the Family of the *Mareſchals*, as appears by the Record of the Confirmation, 1° *Johannis*.

Ib. f. 599.

Vid. 2d Part.

Vid. Appendix. Rot. Pat. 1. Johan. N. 85. M. 12.

CHAP. VIII.

The Third Head of Poſitive Law.

The Kingdom founded in Monarchy, yet Elective, ſub modo. *The Form of Government not diſſolv'd with the Contract between Prince and People. The Argument from* Election *of Kings, as it is uſed by the Author of the* Sighs of *France* enſlaved. *The Crown of* England *proved Elective*, Sub modo, 1. *From the* Saxon Pontifical, *and the* Council *of* Calcuth, Anno 789. 2. *From the Practiſe till the ſuppoſed Conqueſt.* 3 *From the Confeſſor's Law received by* W. 1. *and the Expreſſions of Ancient* Hiſtorians *and* Lawyers *ſince the time of* W. 1. 4. *The Common uſage in asking the People's conſent at* Coronations. 5. *The Opinion of Kings themſelves.* 6. *The Old Oaths of Allegiance.* 7. *The Liberty, even after a Settlement of the Crown.* 8. *The Breaches in the Succeſſion.* 9. *The Statute* 11 H. 7. *Anſwers to the Objections*, 1. *That the King never dies.* 2. *The ſuppoſition of a Teſtamentary Heir.* 3. *The Declaration*, temp. E. 3. *againſt conſenting to the diſherizon of the King and His Heirs.* 4. *The claims of Right between Two Families.* 10. *A qualified* Election *of Kings of* England, *confirmed, by obſerving how it has been in other Nations deſcended from the ſame Common Stock*

THE Kingdom I own is founded in *Monarchy*; and ſo is *Poland*, which yet is abſolutely *Elective*: Nor is there any conſequence that the diſſolution of the Contract between the immediate Prince and People, ſhould deſtroy the form of Government; for that depends upon a Prior Contract, which the People entred into among themſelves: And that by virtue of this, to avoid endleſs competitions, our Kings have generally from the firſt erection of the *Engliſh Monarchy*, been choſen out of the ſame Family, appears beyond contradiction.

Thus objected by the Author of Elementa Politica.

Of the Magiſtracy, &c. vindicated, and others.

Vid. Pufendorf de Interregnis, *p.* 267. Poſt decretum circa formam Regiminis novo pacto opus erit, quando conſtituuntur ille vel illi in quem vel in quos Regimem cœtûs confertur.

If our Monarchy will appear from the foundation, to be no otherwiſe an inheritance than as it is ſetled on a Family, with a latitude for choice within the Family, no Man can doubt but it will tend greatly towards removing objections againſt our preſent Settlement; 'tis certain the *Learned Author* of *The Sighs of* France, improves the Argument farther than is needful for us.

'It is, ſays he, indubitable, That they who have power to Chuſe, 'have power to Depoſe.

Soupirs de France, Mem. 6. p. 1.

'Every

'Every Nation, ſays he, that makes a King, preſerves to its ſelf a 'right to unmake him, when he goes beyond the bounds of his duty, 'and when he ruines the Eſtate inſtead of preſerving it; and this 'very thing makes it appear, That *Elected Princes* neither are, nor 'can be Soveraigns of an Arbitrary Power. P. 81.

I know ſome talk of a *Birthright and Inheritance in the Crown of* England, *which is not founded in the ſtatutes, but on the original Cuſtom and Conſtitution of the* Engliſh *Government*, which is thought to be an *hereditary Monarchy, according to proximity of blood.* Jovian, *p.* 87.

But I would deſire all Men of this Opinion, impartially to weigh theſe following particulars:

1. Mr. *Selden* in his *Titles of Honour*, ſhews us the form of Prayer uſed at the Coronation of *Saxon* Kings, wherein they pray God to bleſs him whom they *chuſe* for King, and call him one choſen to be Crowned King, *Et hunc electum in Regem coronandum bene ✠ dicere & conſecrare digneris.* And as anciently as the year 789. an Act was made in a General *Convention* of all *England*, *in Conventu Pananglico*, that their Kings ſhould be Elected by the *Clergy*, *& ſenioribus populi*, and Elders of the people; that is, ſuch as were Members of their *Great Councils*, or *Witena Gemots*, Aſſemblies of Sage and Wiſe Men. This, tho it was long before the reputed Conqueſt, yet was never repealed or cut off by the Sword; nay, ſeems received with the Confeſſor's Laws, as included in them. *Titles of Honour*, f. 157. *Out of the* Saxon *Pontifical.* *At* Calcuth, Anno 789. Spel. Concil. 1 Vol. f. 291.

2. It appears by the ſeveral inſtances given in the fourth Chapter, and the teſtimonies there, both of *Malmsbury*, and the Publiſher of the life of King *Alfred*, That no *lineal* Succeſſion was obſerved here, before the ſuppoſed Conqueſt.

3. The Confeſſor's Law received by *W.* 1. and continued downwards as the nobleſt Tranſcript of the Common Law, ſhews, that the Kings of *England* were to be *elected*, and the end for which they are choſen by the people. After the ſame manner do the ancient Hiſtorians and Lawyers, as well ſince that time as before, commonly expreſs acceſſions to the Throne; and ſeem induſtriouſly to mind Kings of it, that, according to the caution given the *Jewiſh* Kings, their *hearts be not lifted up above their Brethren.* Vid. Sup. Deut. 17. 20.

4. According to the uſage from before the reputed Conqueſt downwards, the People are asked, Whether they are content to have ſuch a Man King.

5. The moſt abſolute of the *Engliſh* Monarchs never believed, that their Children had a right to the Crown, except the people conſented that they ſhould ſucceed; as appears by King *Alfred*'s Will, and the Death-bed Declaration of *William* 1. And therefore ſome of our Kings, againſt whom there has been no pretence of better Title in any particular Perſon or Family, when they ſtood upon good Terms with their People, have often prevail'd with them, in their Lives-time, to ſecure the Succeſſion to their eldeſt Son; and *H.* 2. to prevent hazarding the Succeſſion, endanger'd himſelf, by getting his eldeſt Son Crown'd, himſelf living: But as the going no farther than the eldeſt, argues, that they looked on that as a Favour; the preſſing for a Settlement on their Iſſue in any manner, argues, That it was not look'd upon as a clear Point of Right without it. Cambd. Brit. f. 104. de W. 1 Neminem Anglici regi conſtituo Haredem, ſed a terno conditóri cujus ſum, & in cujus manu ſunt omnia, illud commendo: non enim tantum decus hareditario jure poſſedi, &c.

Of later Times Settlements have been made in Tail, which though they were occaſion'd by Pretences to Titles, are Records againſt an *Hereditary Monarchy*, according to the common notion, which is one that by the original Conſtitution deſcends to the next in the Line, male or Female.

V. Leges *W.* 1. de Fide, &c. Statuimus etiam ut omnes liberi homines fœdere & ſacramento affirment, quod intra & extra regnum *Angliæ Williel-mo* Regi Domino ſuo fideles eſſe volunt, &c. Leges S. *Edw.* tit. Greve. Vid. Juramentum homagii facti Regi.

6. The Oaths of Allegiance, required of all the Subjects, were never extended to Heirs, but were barely Perſonal, till Settlements of the Crown were obtain'd upon the Quarrels between the Families of *York* and *Lancaſter*; and though *H.* 4. obtain'd in Parliament an Oath to himſelf, the Prince, and his Iſſue, and to every one of his Sons ſucceſſively; and in the time of *H.* 6. the Biſhops and Temporal Lords ſwore to be true to the Heirs of *R.* Duke of *York*; yet perhaps no Oath of Allegiance to the King and *his Heirs* can be ſhewn to have been requir'd of the Subjects in general, till that 26 *H.* 8. according to the Limitations of the Statute 25.

Pryn's *Signal* Loyalty, p. 274. *Pol. Virgil.* l. 22. ſub initio.

7. Even where the People had ſetled the Crown, they ſeem'd to intend no more, than to give a preference before other Pretenders; not but that as Ideocy, Frenzy, or the like, might ſet ſuch an one aſide; ſo upon other weighty Reaſons they might alter the Settlement; as appears by *Polydore Virgil*, who was never thought to lie on the Peoples ſide, whatever Evidences for them he may have conceal'd, or deſtroy'd; whoſe words of *H.* 5. to whom the Crown had been limited by Parliament, may be thus rendred.

Nota, Proceres *may take in the* Nobiles minores.

" Prince *Henry* having buried his Father, cauſes a Council of No-
" bles to be conven'd at *Weſtminſter*; in which while they, according
" to the Cuſtom of their Anceſtors, conſulted about making a King,
" behold, on a ſudden ſome of the Nobility, of their own ac-
" cord, ſwear Allegiance to him; which officious Good-will was
" never known to have been ſhewn to any, before he was declared
" King.

William 2. *was elected during the Life of his eldeſt Brother, who was ſet aſide by the* Engliſh, *againſt whom he had diſcovered Ill-will, in ſpite of the* Normans.

8. As the Practice of the Kingdom is an Evidence of its Right, numerous Inſtances might be produc'd of Choices ſince the ſuppoſed Conqueſt, not only ſo called by Hiſtorians, but appearing ſo in their own Natures; wherein no regard has been had to *Proximity*, but barely to Blood.

So H. 1. Stephen *was elected while* Maud *the Daughter of* H. 1. *was alive*; *and* H. 2. *ſucceeded in her Life-time, upon an Agreement made with* Stephen, *by the Peoples Conſent.* R. 1. *as within.. King* John *crown'd in the Life-time of his eldeſt Brother's Son, Prince* Arthur: *So was his Son* H. 3. *in the Life-time of* Eleanor, *Prince* Arthur's *Siſter.* E. 1. *as within.* E. 2. *elected.* E. 3. *ſet up by the People in his Father's Life-time, which the Father took for a Favour.* R. 2. *declared Succeſſor by Parliament, in the Life-time of his Grandfather.* H. 4. *of the younger Houſe, came in by the Peoples Choice, upon their depoſing* R. 2. H. 5, & 6. *Son and Grandſon to* H. 4. *came in upon a Settlement.* E. 4. *of the elder Houſe, came in under an Agreement made in Parliament, between his Father, who liv'd not to have the benefit of it, and* H. 6. *His Son.* E. 5. *was never crown'd.* R. 3. *who ſet him aſide, was of the younger Houſe.* H. 7. *who vanquiſh'd him, could have no Right of* Proximity; *for the Daughter of* E. 4. *and his own Mother, were before him. All that came in ſince, enjoy'd the Crown, either under the various Settlements of* H. 8. *or that of* H. 7. *which took place again in* J. 1. *or from* H. 6. *at the higheſt.*

And I believe no Man can ſhew me any more than Two ſince the reputed Conqueſt, of whom it can be affirm'd, with any ſemblance of Truth, that they came in otherwiſe than upon Election, expreſs'd by the

the Hiſtorians of the Time, or imply'd, as they had no other Title, or elſe a late Settlement of the Crown, either upon themſelves immediately, or in Remainder. The Two upon which I will yield ſome colour, are *R.* 1. and *E.* 1. which ſingular Inſtances will be ſo far from turning the Stream of Precedents, that unleſs the Form or Manner of Recogniſing their Rights as Hereditary, be produc'd, the Preſumption is ſtrong, that the Declarations of the Conventions of thoſe Days, or the Peoples acquieſcing upon the Queſtion, Whether they would conſent to the King in nomination, or both, made even their Caſes to be plain Elections. And of theſe two Inſtances, perhaps one may be ſtruck off: For tho *Walſingham* ſays of E. 1. They recogniz'd him for their *Liege-Lord*, that does not neceſſarily imply a Recognition from a Title *prior* to their Declaration; for which way ſoever a King comes in duly, he becomes a *Liege-Lord*, and is ſo to be recogniz'd or acknowledg'd; and that the Title was not by this Author ſuppos'd *prior* to the Recognition, appears, in that he ſays, *Paterni honoris ſucceſſorem ordinaverunt*, "They ordain'd or appointed him Succeſſor of his Father's Honour. And yet his Father, to ſecure the Succeſſion to him, had ſoon after his Birth iſſued out Writs to all the Sheriffs of *England*, requiring all Perſons above Twelve Years old, to ſwear to be faithful to the Son, with a *Salvo* for the Homage and Fealty due to himſelf.

Walſingham, f. 1.

Walſing. ib.

Sir P. P. Obligation of Oaths, f. 295.

Indeed, of *R.* 1. the Hiſtorian ſays, *He was to be promoted to the Kingdom by Right of Inheritance*; yet the very Word, *promoted*, ſhews ſomething that he was to be rais'd to, higher than that Right alone would carry him; which he fully expreſſes in the Succeſſion of *E.* 2. which, he ſays, was *not ſo much by Right of Inheritance, as by the unanimous Aſſent of the Peers and Great Men.* Which ſhews, that ordinarily they, reſpectively, who ſtood next in Blood, might look for the Crown before another, till the People had by their Choice determin'd againſt them. This appears very fully by the Commiſſions iſſued out for the taking the Oath of Allegiance to *E.* 1. both in *England* and *Ireland*, after the People of *England* had agreed in his abſence, to receive him for their King. The Commiſſion, or *Dedimus* for *Ireland*, runs thus: *Cum Angliæ Gubernaculum, & terræ Hiberniæ dominium, ſucceſſione hereditariâ nobis pertineant; ob quod Prælati, Comites & Proceres, ac Communitas regni nobis tanquam domino ſuo ligio, & regi, fidelitatis juramenta & omnia alia, quæ nobis ratione Coronæ & dignitatis regiæ, ab ipſis fieri aut præſtari nobis in abſentiâ noſtrâ potuerunt, plenariè & ſine omiſſione aliquâ, prompto & libenti animo præſtiterunt, ac vos tanquam Regi & Domino veſtro ligio conſimile Sacramentum fidelitatis præſtare teneamini*, &c. Dat. 7. Decemb. Here the Lords and Commons, by whoſe direction the Commiſſion was ſent to *Ireland* in the King's abſence, acted without ſtaying for Powers from him; they own indeed his coming to the Crown by *Hereditary Succeſſion*; and that by reaſon of that Inheritance, or his ſtanding next to his Father, they had ſworn Allegiance to him; yet they ſay, they had done it *prompto & libenti animo*, voluntarily; which, tho it does not neceſſarily imply a free choice, leaves room for the admiſſion of it. And he that obſerves the *Dedimus* for *England*, may ſee that this ordinary Right of Inheritance was not lookt on as enough to conſtitute him King, without the conſent of the *Proceres Regni*, which in the Language of that time, took

Walſingham, Ypod Neuſtriæ, f. 45.

Walſing. f. 68.

Clauſ. 1. E. 1. m. 20. De conſervatione pacis in Hibern.

in

Vid. Jan. Ang. fa. Nov. & Jus Anglorum ab Antiquo. Vid. etiam 2 part. inf.

in the Commons, as I have elſewhere ſhewn, and appears not only by the enumeration, in the record for *Ireland*, of the Parties who received and ſwore to him as their King; But even by the *Dedimus* for *England*, which ſays the *Magnates & Fideles* caus'd his Peace to be Proclaim'd. So much of the Record as is material, here follows.

Clauſ. 1. E. 1. m. 11.

Quia defuncto jam celebris memoriæ Domino H. *Patre noſtro ad nos regni Gubernaculum* **Succeſſione hereditaria, ac procerum regni voluntate & fidelitate** *nobis præſtita ſit devolutum, per quod nomine noſtro, qui in exhibitione juſtitiæ & pacis conſervatione omnibus & ſingulis de ipſo regno ſumus ex nunc debitores, pacem noſtram dicti* **Magnates & Fideles** *fecerunt proclamari.* Here the ſaid *Proceres* are brancht into *Magnates & Fideles*, *Lords* and *Commons*; and their Conſent, and Swearing Allegiance, is join'd with the Succeſſion, as the *per quod*, or ground of the King's becoming a Debtor, for exhibiting Juſtice, and preſerving the Peace as King of *England*.

What I have here ſhewn of E. 1. with that under the Sixth Obſervation, giving an account of the Peoples forwardneſs in ſwearing Allegiance to *H.* 5. abundantly confutes the Inference from the Allegiance ſworn to thoſe two Kings, made by the Author of *Elementa Politica*, in theſe words, 'We may obſerve that the Kings of *England* 'are in full Poſſeſſion of the Crown, immediately upon the Death of 'their Predeceſſors, and therefore King *Edward* 1. and *H.* 5. had Al- 'legiance ſworn to them before their Coronation; whence, ſays he, 'it follows, that as ſwearing does not make them Kings, ſo neither can 'Perjury, tho truly objected, unmake them again.

Elementa Politica, p. 12.

He inſtances alſo in King *John*, but ſurely cannot pretend that he had any Right before the Peoples immediate Choice, to which the Arch-biſhop told him, that he ow'd his Crown. And if the People ſwore firſt, yet 'tis certain it was not, till he had been received as King of *England*, which implies the terms expreſt in the Oath.

Bromton, f. 1155. *So* Hoveden, f. 656.

But to return to *R.* 1. 'tis obſervable, That he was not called King here, but only *Duke of Normandy*, till he was Crown'd; which, next to the People's Choice, was in great meaſure owing to his Mother's Diligence: For he being abſent at the Death of his Father, his Mother, who had been releas'd out of Priſon by his means, to ſecure the Succeſſion to him, went about with her Court from City to City, and from Caſtle to Caſtle, and ſent Clergy-men, and others of Reputation with the People, into the ſeveral Counties, by whoſe Induſtry ſhe obtain'd Oaths of Allegiance to her Son and her ſelf, from the People in the County Courts, as it ſhould ſeem; notwithſtanding which, the Arch-biſhop charg'd him at his Coronation, not to aſſume the Royal Dignity, unleſs he firmly reſolv'd to perform what he had ſworn: To which he anſwered, That by God's help he would faithfully obſerve his Oath. And *Hoveden* ſays, That he was Crown'd by the *Counſel* and *Aſſent* of the Archbiſhops, Biſhops, Earls, Barons, and a great number of *Milites*, which Word was then of a large extent. Wherefore I ſubmit it to Conſideration, whether theſe are any Exceptions to the General Rule, or are not at leaſt ſuch as confirm it.

Bromton, f. 1159.

Hoveden, f. 656.

11 H. 7. c. 1.

9. The Parliament 11 *H.* 7. declares, That it is againſt all *Laws Reaſon, and good Conſcience, that Subjects ſhould loſe or forfeit for doing their true Duty and Service of Allegiance to their Prince, or Sovereign Lord for the time being*; that is, to the King *de facto*; as appears by the

the occaſion of the Law, which was to encourage the ſervice of *H.*7. who had no Title but from his Subjects. And there is a Proviſion, *That any Act or Acts, or other Proceſs of Law to the contrary, ſhall be void.* Which if it relates to Acts of Parliament, being built upon the Suppoſition, That according to the Fundamental Law, the Peoples Choice gives ſufficient Title, perhaps is not vain and *illuſory*, as the Lord *Bacon* would have it; but argues ſtrongly, that the Parliament then thought the Monarchy fundamentally Elective; at leaſt with that Reſtriction to the Blood; which I yield. And if this be part of the Fundamental Contract, for which it bids very fair, then perhaps no body of any other Stock may be King within this Statute.

Lord Bacon's *Hiſt. of* H. 7. *f.* 145.

But I take it not to be evident, that the Acts here mention'd muſt needs be Acts of Parliament: For they might, and by the word [*other*] ſeem to be, ſuch Acts as are of the nature of ordinary Proceſs, or whereon ſuch Proceſs is grounded, as Ordinances of the Lords in Parliament, Orders of the Privy Council, Judgments or Decrees in Courts of Law or Equity, and the like.

However, admit this Clauſe ſhould be vicious and inſignificant: My Lord *Bacon*, I am ſure, gives no countenance to a certain Diſſenting Biſhop's Argument in publick Diſcourſe, who undertook from hence to prove, That the Statute it ſelf is of no force.

Yet ſuch ſort of Arguments are of great ſervice to men reſolv'd upon a Concluſion; nor can better be expected from them.

To what I have offer'd on this Head, the following are all the Objections of ſeeming weight which have occurr'd to me.

Object. 1.

The Maxim in Law, *That the King never dies*: Or, to uſe the words of *Finch*, 'The Perpetuity which the Law aſcribes to him, having 'perpetual Succeſſion; and he never dies; For in Law it is call'd the Demiſe of the King.

Finch's *Deſcription of the Common Law.* French *Edit.* An. 1613. *f.* 20. b. & 21. a. *The ſame made uſe of in Reflections upon our late and preſent Proceedings*, p. 10.

Anſwer.

To which I Anſwer, 1. That neither that Book, nor any Authority there cited, is ſo ancient as the Settlement of the Crown above obſerv'd: And that the Death of a King is but a Demiſe, tranſferring the Right immediately to a Succeſſor, may be owing to the Settlement, but is no Argument of any Right otherwiſe. 2. Even where there is an Election, tho never ſo long after the Death of the Predeceſſor, yet by way of Relation, 'tis as if there were a Demiſe, or Tranſlation of Intereſt without any *Inter-regnum*: as it was reſolved by all the Judges, 1 *Eliz.* Of which the words of Lord *Dyer* are, 'The King, who is Heir *or* Succeſſor, may write and begin his Reign 'the ſame day that his Progenitor or Predeceſſor dies: With which agrees the Lord *Anderſon.*

Dyer f. 165. Anderſon *f.* 44. *He has it*, Le Succeſſeur & le Heir. *Elſewhere*, Heir ou Succeſſeur, ib. f. 45.

But that to many intents a King dies in his Politick Capacity, as well as Natural, appears by the diſcontinuance of Proceſs in Criminal Cauſes, and ſuch in Civil as was not return'd in the Life of the former King till kept up by Statute; the determination of Commiſſions, and the like.

Vid. 1. E. 6. c. 7. 7 Rep. f. 30.

Agreement betwixt the preſent and former Government.

Suppos'd to be Doctor Fulwood's.

A Learned Author, that he may reconcile our preſent Settlement to this ſuppos'd Maxim, which appears, not to have any foundation in Antiquity; will have it, That by the *Vacancy of the Throne*, no more was meant by the *Convention*, than its being free from the former Poſſeſſor: but that it was full of a Succeſſor, and that there was no *Interregnum*; *For*, ſays he, *ſuch a Vacancy we have upon every Demiſe of the Crown.*

P. 42.

And ſo there was a *Vacancy* of the Throne, and no *Vacancy* at all. For in ordinary *Demiſes*, 'tis manifeſt there is none. Freedom from the laſt Poſſeſſor, is not a *Vacancy* of the Throne.

Two Grounds this Doctor goes upon to juſtify his Equivocation in this, for I can call it no better.

1. That otherwiſe this would be inconſiſtent with the nature of our Ancient Hereditary Monarchy.

2. That the Convention ſhew, that they meant it no otherwiſe than in his Senſe.

1. As to the *Firſt*, It is obſervable, 1. That the Notion which himſelf goes upon, is as inconſiſtent with the ordinary Rule: For he makes the Heir to have only *jus in re*, and to want Livery and Seiſin. And conſequently, till the Coronation there is an *Interregnum*: Tho it may afterwards be ſupplied by relation to the Deſcent of the Right.

P. 40.

But herein the Doctor is certainly out: For in ordinary Deſcents, or Demiſes, Treaſon may be committed againſt the Heir as in full poſſeſſion, before any Recognition or Coronation. But ſince he will hardly affirm that it could have been ſo in our Caſe, he muſt grant that there was a more abſolute *Vacancy* than that for which he contends. It is his own Argument, that our preſent Sovereigns are really King and Queen, becauſe Treaſon may be committed againſt them within the purview of the Statute 25 *E.* 3. And by the ſame Reaſon they were not King and Queen before they were declar'd ſo, unleſs Treaſon could have been committed againſt them before ſuch Declaration.

Hales's *Pleas of the Crown, p.* 40.

P. 54.

2. But 2. The Doctor owns, that though *upon ſome extraordinary Revolution, and ſome abſolute neceſſary Reaſon of State, for our common preſervation, a Stranger*, none of the Blood-Royal, *ſhould be advanced to the Throne for one or more turns; whilſt that neceſſity continues, the Conſtitution of the Government would not be alter'd.* And yet would ſuppoſe, that if our King and Queen come in otherwiſe than by Deſcent, it would be *a Deſign'd Alteration or Change of the Ancient Conſtitution of this Hereditary Monarchy.*

P. 56. V. *p.* 41. *Where he ſpeaks as his own Senſe, what in the other place is put by way of Objection.*

And yet himſelf owns, *That by the Law of Nature*, Salus Populi *is both the Supream, and the firſt Law in Government; and the ſcope and end of all other Laws, and of Government it ſelf.* Nay, he yields, *That the Oath of Allegiance, that Sign or Teſtimony between King and Subject, is diſcharged or diſpenced with, when* Salus Populi, *the preſervation of Three Kingdoms is concern'd, and in danger.*

If

If then an Alteration of the Courſe of Deſcent, in caſe of Neceſſity, is ſo far from a Change of the Conſtitution, that 'tis by vertue of the Chief Fundamental Law the *Salus Populi*: I hope it will be allowed, That the Repreſentatives of the People, have upon the *Vacancy* of the Throne from a former Poſſeſſor, which he yields, to have been in the Caſe in queſtion, a right to judge wherein their own Safety lies. Otherwiſe they have a Law of which they can have no benefit. And ſince our Repreſentatives have made ſo wiſe a determination, they that do not ſubmit to it, may well be lookt upon as Perſons who *abdicate* themſelves from the benefit of this Government.

Nay, further, the Doctor confeſſes, that for his part he knows no *Law* againſt the poſſibility either of a *Vacancy in the Throne, or an Interregnum in extraordinary Caſes*; ſuch as himſelf yields ours was.

But the remaining Queſtion is, Whether the Convention ſhewed that they meant ſuch a Vacancy as caus'd an *Interregnum*? Their Words, as he obſerves, are theſe, [*King* James *the ſecond having Abdicated the Government, and the Throne being thereby vacant.*] So far he is in the right, That the *Convention* went upon the *Suppoſition* of a *Vacancy*; but their *ſuppoſition* did not make one, neither did it make an *Abdication*: But 'tis evident that the *ſuppoſition* of the *Vacancy*, as Conſequent upon the *Abdication*, was the Ground of ſetling the Government as it is; and that they look'd upon the *Vacancy* as more than a freedom from the laſt Poſſeſſor, appears by their preferring His Majeſty in the Settlement: Which preference had been juſtifiable even according to what the Doctor receives, tho this King had not been of the Blood-Royal. P. 38.

But for a farther Evidence, that the Throne was abſolutely *Vacant* in the eye of the Law, and ſo judg'd and declar'd to all Men by the *Convention*, and *Their Majeſties*, concurring in a Parliamentary Act; The Doctor may pleaſe to conſider the Statute for *Supplying defects relating to proceedings at Law*: Which provides, that for *Crimes committed between the 11th of* December, *and the 13th of* February *following, Informations or Indictments* ſhall have only the year of our Lord God, inſtead of the year of the King's Reign. And where Concluſions uſed to be *contra pacem Domini Regis*, they ſhall conclude, *contra pacem Regni*. *The Stat.* 1 W. M. *for reviving of Actions and Proceſs lately depending in the Courts of* Weſtminſter, *and Diſcontinued by the not holding of* Hillary *Term, and for ſupplying other defects relating to proceedings at Law. Conſid. touching the* Oath *in the Title page.*

Let not *Divines* therefore go to argue us out of our Government; but let them ſubmit to that Rule which Dr. *Whitby* cites, *Optima regula quâ nulla eſt verior, aut firmior in jure, neminem oportet eſſe ſapientiorem Legibus.*

'Tis urged, That the Hereditary Right contended for, has not been interrupted by the Peoples Elections, ſo often as it ſhould ſeem by the Breaches in the Succeſſion; for that many who came in before them who ſtood next, were *Teſtamentary Heirs* of the appointment of the Predeceſſor: Which argues an Inheritance in him that Diſpoſes. And Dr. *Brady* thinks he produces an Example, where *the Election of the People was bound and limited by the nomination of the Predeceſſor.* *Object.* 2. Brady's *Hiſt. of the Succeſſion,* f. 8, 9.

But if he had duely weighed the Preſidents of this kind, he might have underſtood, That an Election without a Nomination, had full effect, while a bare Nomination had none. And he might have learnt

learnt from *Grotius*, That among the *Germans*, from whom we deſcend, Kingdoms did not uſe to paſs by Wills; and that Wills were but *Recommendations to the Peoples Choice, but not Diſpoſitions.*

Mezray *in the Life of* Clotair 2.

And that thus it was in *France*, appears by their Hiſtorian *Mezray*, who ſhews, That anciently the King's of *France* were choſen out of the Royal Race: But that Three Conditions were ordinarily requir'd. 1. Birth; for they were to be Legitimate. 2. The Will of the Father. 3. The Conſent of the Great Men; which commonly uſed to follow the other two.

Object. 3. Vid. *Debates about Depoſing.*

I find it urged, That as anciently as the time of *E.* 3. the Realm declared, "That they would not conſent to any thing in Parliament, "to the Diſheriſon of the King and his Heirs, or the Crown where-"unto they were Sworn.

Anſw.

Knighton, f. 248.

If any colour of evidence can be produced that the Subjects of *England* ſo early as that, Swore Allegiance to the King and his Heirs, this were to the purpoſe. Indeed, I find, that before this, 24 *E.* 1. a Foreign Prince, the King of *Scotland*, Feudatory to the Crown of *England*, did Homage to the King and his Heirs; but the like not being exacted of the Subjects of *England* till particular Acts, whereby the Crown was ſetled; it argues ſtrongly, as indeed appears from the Subject matter, That the Homage paid by a Foreign Prince, was due to none but the preſent King, and his Succeſſor to the Kingdom, whoever was next of Blood. And by parity of Reaſon, the Diſheriſon of the King, and him, her, or them who ſucceeded to the Crown, was all that could be referr'd to, when they urged the Obligation of their Oath to the King and his Heirs, or the Crown: Which appears farther, not only from the old Oath of Allegiance, to which they muſt needs have reference, whereby they are bound to defend the Rights of the Crown; but even from the Matter then in queſtion, which was not of the Right of Succeſſion, but of a Flower of the Crown. *Bracton* puts this out of Diſpute, when he tells us, 'That 'Inheritance comes not from an Heir; but an Heir from Inheritance: 'And that Inheritance is the Succeſſion to all the Right which the 'Predeceſſor had by any ſort of Acquiſition.

Leges Sancti Edwardi tit. Greve. Conjurati fratres ad defendendum Regnum, &c. & honores illius omni fidelitate cum eo ſervare. *So* Leges W. 1. tit. De Fide & obſequio erga Regem. Quod Willielmo Domino ſuo fideles eſſe volunt & honores illius, &c. defendere. *Bracton*, Lib. 2. Cap. 29.

Vid. *Sir* P. P. *As Succeſſors are Heirs, ſo Dr.* Brady *tells us, Gloſſ.* f. 18. *That Prepoſſeſſor, one that poſſeſſed the Land before the preſent poſſeſſor, without any relation to Blood or Kindred, is Anceſtor in Doomſday, and in the Writ* de Morte Anteceſſoris.

With *Bracton* agrees the Civil Law, *Hæredis ſignificatione omnes ſignificari ſucceſſores credendum eſt, etſi verbis non ſint expreſſi:* 'By Heirs 'we are to believe all Succeſſors to be ſignified, altho' not expreſſed in 'words: And again, *Nihil eſt aliud hæreditas quam Succeſſio in univerſum jus quod defunctus habuit*; 'Inheritance is nothing elſe but Suc-'ceſſion to all the Right which the deceaſed had. Wherefore I cannot but wonder that ſo learned a Man as Sir *P. P.* ſhould cite this to prove, that Allegiance is due to the Heirs and Succeſſors in a *Legal Courſe of Deſcent*; That is, as he explains, or receives it out of Mr. *Prynn*, *by Proximity of Succeſſion, in regard of Line.*

Sir P. P's *Obligation of Oaths*, f. 302. F. 298. F. 300.

Nor

Nor is this Learned Man more fortunate in mentioning the *Salvo* which *Littleton* tells us is to be taken to the Oath of Homage to a Subject, *Salve la Foy que jeo doy a noſtre Signior le Roy*; where there is not a word of Heirs: But he tells us, that *Littleton* cites *Glanvil*, where the word *Heirs* is. Whereas 'tis the Lord *Cook* who makes the Quotation, as he does of *Bracton*, whoſe ſenſe of the word *Heirs* we have ſeen: And *Littleton* fully confirms it, by leaving out the word *Heirs*, as a Redundancy, Allegiance being due to every one that becomes King, and to no other.

Sir P. P. f. 297. Littleton, *tit. Homage*, Sect. 85.

But to put the Extent of Heirs to a King out of Controverſy, we have the reſolution of all the Judges in B. R. in the time of Q. *Eliz.* on my ſide. King *R.* 3. had granted certain Privileges to the Burgeſſes of *Gloceſter*, with a ſaving to himſelf and his Heirs. And it was agreed by all the Juſtices, 'That although the words are ſaving to 'himſelf and his Heirs, it ſhall be taken for a perpetual ſaving, which 'ſhall go to his Succeſſors. This therefore they adjudged to reach the Queen, who 'tis well known was not Heir to *R.* 3.

Popham's *Rep.* f. 16, *and* 17.

Object. 4. The great Objection is, That in the Conteſts for the Crown between the Families of *York* and *Lancaſter*, each ſide pretended Title by Proximity of Blood; and as either prevail'd, their Right was acknowledged to be according to *God's Law*, *Man's Law*, and the *Law of Nature*. To which I anſwer,

As appears in the very Objection, this was applied to thoſe who had no Right of Proximity, as well as to thoſe who had. And thus 'twas to *R.* 3. as well as to *E.* 4. and even the Election of *H.* 4. after the Depoſing and Relinquiſhing of *R.* 2. with his own expreſs conſent, is by the ſame Parliament that ſays ſo much of the Title of *E.* 4. called an Uſurpation upon *R.* 2. Wherefore if this Record be any way leading to our Judgments, no Depoſing or Reſignation, what ever be the Inducement, can be of any force.

Whence 'tis plain, that all thoſe are but Complements to the longeſt Sword; However they neither ſet aſide former Authorities, nor eſtabliſh any Right for the future; at leaſt not more for the Heirs of *E.* 4. than the Parliament of *R.* 3. did for His Heirs: Yet whoever comes next by Right of Proximity, according to any Settlement in being, I will not deny that they enjoy the Crown according to *God's Law*, *Man's Law*, and the *Law of Nature*: For, as the great *Forteſcue* has it, *All Laws publiſhed by Men, have their Authority from God.* Upon which the Author of *Jovian* argues, and ſuppoſes *all Laws of Men*, to be the *Laws and Ordinances of God.* Yet who can ſay but theſe *Human Creatures*, or *Ordinances of Men*, may be altered, as they were made? And thô it may ſeem ſtrange to ſome, yet I may with great Authority affirm, That when the People had determined the Right on the ſide of *R.* 3. He was King as much according, to *God's Law* as *E.* 4. For *Peufendorf* holds, That where the Queſtion is, What Degree, or what Line is beſt? The declared will of the People determines the Controverſy; ſince every one is preſum'd to underſtand his own Intention. And the people that is now, is to be thought the ſame with that by which the Order of Succeſſion was Conſtituted.

Forteſcue de laudibus legum Angliæ, c. 3. Jovian, *p.* 253.

Peufendorf. de Interregnis, *p.* 288. Quod ſi dubitatur qui gradus aut quælinea ſit potior, declarata voluntas populi finem liti imponet, &c.

But let Men argue as nicely as they pleaſe for a *Right* or *Sovereignty inſeparable* from the perſon of the next in Blood, to the laſt Lawful

ful King; let this fall upon *J.* 2. the reputed Prince of *Wales*, or any other perſon of unclouded Birth and Fame; and let them argue upon the Declaration 1 *E.* 4. That Allegiance, accordingly, is due by *God's Law*, *Man's Law*, and the *Law of Nature*: Certain it is, That the Statute 11 *H.* 7. abovementioned, was not only made in an Age of greater Light; but being a ſubſequent Law, derogates from whatever is contrary in the former. By this laſt it is declared to be againſt all Laws, That Subjects ſhould ſuffer for doing *true Duty and Service of Allegiance* to the King *de facto*: Which is as much as if 'twere expreſſed to be againſt *God's Law*, *Man's Law*, and the *Law of Nature*. By the neceſſary conſequence of which, Allegiance is due to a King *de facto*, according to all theſe Laws. Wherefore whoever denies Allegiance to *King William* and *Queen Mary*, or maintains a contrary one to *J.* 2. offends againſt *God's Law*, *Man's Law*, and the *Law of Nature*. Nor, whatever ſome imagine, can the *Proviſo* at the end of this Statute in the leaſt impair its force, as to what I uſe it for. The *Proviſo* runs thus:

Vid. 3 *Inſt.* f. 7. *upon the Stat. of Treaſon* 25 E. 3. *referring in the Margin to this Statute. This is to be underſtood of a King n poſſeſſion of the Crown and Kingdom: For if there be a King Regnant in poſſeſſion, although he be* Rex de facto *and not* de jure, *yet He is* Seignior le Roy, *within the purview of this Statute; and the other who hath the Right, and is out of poſſeſſion, is not within this Act. Nay, if Treaſon be committed againſt a King* de facto, *and after the King* de jure *come to the Crown, he ſhall puniſh the Treaſon done to the King* de facto, *And a Pardon granted by a King* de jure, *that is not alſo* de facto, *is void.*

11 H. 7. c. 1. ‘ *Provided* always, That no perſon or perſons ſhall take any bene-
‘ fit or advantage by this Act, which ſhall hereafter decline from his
‘ or their *ſaid Allegiance.*

Where *ſaid Allegiance*, ſhews it to be meant of Allegiance to the King *de facto*, whoſe *Service* is called *true Duty*. And no Man ſurely can think the meaning to be, that if after ſuch Service they turn to the other ſide, or become Traitors to the preſent Power, they ſhall ſuffer for the former Service as Traitors againſt him that had the Right, either during the Reign of the King in being, which would be an unlikely owning the Ejected Power; or hereafter, if that ſhould come to be reſtor'd; which would be far from anſwering the apparent end of the Clauſe, which is to keep Men in obedience to him who has the Power of puniſhing the diſobedient. Wherefore the meaning may be, That no Man who departs from his Duty of Allegiance to the preſent King, ſhall ſave himſelf by pleading, that he had been in Arms, or had done him any ſignal Service. In ſhort, this was to be no *Corban* to Anſwer for any following departure from Duty.

But as the body of the Act provides only for the Indemnity of them who pay due Allegiance to the King *de facto*; this *Proviſo* may be particularly for the Kings own Security in affirmance of the Common Law, which makes all Reſiſting the Poſſeſſors of Crowns, Treaſon, in ſingle perſons. And the ſenſe may run thus: *Provided*, that whoever declines from Allegiance to the King in poſſeſſion, to help another to the Crown, ſhall not, if the firſt happen to be Reſtor'd, plead that the other became King *de facto*.

However, this does not in the leaſt diminiſh the Obligation of Allegiance to the King who ſhall obtain poſſeſſion by the Ouſting another.

And I ſuppoſe by this time 'tis pretty evident, That both the Body of the Act, and the *Proviſo*, relate only to a King *de facto*, and endeavour to free the Nation from nice ſpeculations about the Right to the Crown.

For

For confirmation of what I have ſhewn, to prove that the *Engliſh* Monarchy has been *Elective*, within the Royal Family, it may not be improper to obſerve how it has been anciently in *Germany* and *France*, or *France Germanick*, from whence we came, and *France Gallick* branch'd out from the Ancient *Germans*. *Aimonius* ſays, 'That the *Francs* choſe a King, and plac'd him upon the Throne, in imitation of other Nations; which the Author of the *Sighs of* France *inſlav'd*, renders the other Nations of the *Gauls* and *Germans*: And that Author puts it by way of queſtion, implying the ſtronger affirmation, 'Whether it does not appear throughout the whole Hiſtory, that the 'French have preſerved to themſelves the Right to chuſe within the 'Royal Family, him who appeared to them the moſt fit to Protect, 'Defend, and Govern them well?

See this diſtinction in Nauclerus. Aimonius lib. 1. c. 4. LesSoupirs de la France eſclave, Mem. 6. p. 83. P. 84.

The *German Conringius*, being an Author already poſſeſs'd of that Credit which may ſpring out of the *French* man's grave; I ſhall tranſcribe *Conringius* to this Point more at large.

Eſſe quid hoc dicam vivis quod fama negatur? Conringius de Negotiis Conventuum Imperii p. 417.

'Altho, ſays he, ſome think that our Kings anciently came to their 'Power by *Succeſſion*, others by *Election*; yet it ſeems fit to ſay, that 'a middle way was in uſe: That the Children of Kings or Emperors 'did not ſucceed, unleſs approv'd of by the *States*; and yet were not 'paſs'd by, if they were worthy of the Empire. For they who were 'come from the Royal Stock, were believed to tread in the ſteps of 'their Anceſtors, and that they would not only preſerve, but exceed 'the glory of their Progenitors, according to that of *Ariſtotle*, *They 'who are of Noble Birth, are deſirous of Praiſe and Glory: For it is the 'nature of men to deſire to encreaſe, not to diminiſh or loſe the goods 'which they had before.*

Ariſtot. Rhet. lib. 2. c. 16.

'But when the Royal Family was extinct, then it was permitted 'the *States* to raiſe to the Empire whomſoever they pleaſed, by an 'Election in every reſpect free. So the *Caroline* Family being extinct, 'the Kingdom of the *Weſtern Francs* was conferr'd upon *Henry*, after-'wards called *Auceps*, by a moſt free Election of the *Francs* and *Saxons*, 'of which *Tranſlation* of Power, *Regino* in his Chronicles of the year '920 ſays thus.

'*Duke* Henry *is choſen King by the Conſent of the* Francs, Almains, 'Bavarians, Thuringians, *and* Saxons, *when, however, he had no prior 'Right to the Empire before the other Princes.* In the ſame manner 'afterwards *Lothair* a *Saxon*, *Conrade* 2. a *Suede*, *Otho* 4. a *Saxon*, and 'many more, obtain'd the Empire of *Germany*, in the right of pure 'Election, as *Onuphrius* witneſſes.

'But whether they were of the Royal Family, or obtaind the King-'dom only and merely by Election, they were choſen by the *States* and *People* in full *Conventions*. For which he inſtances in the *Elections* of *Sigebert* the Son of *Dagobert*; *Charles* and *Charlemain* choſen together upon the death of their Father *Pipin*: Of *Charles* upon the death of his Brother; and *Lewis* the Pious after him.

Onuph. Panvin. c. 5. de Comitiis Imp.

In plenis Comitiis.

This manner of Chuſing within the Royal Family, he obſerves to have remain'd in the Empire, to the time of *H.* 4. but that it was interrupted by Pope *Gregory* 7. who under ſhew of advancing the Liberties of *Germany*, made way for the Papal Influence and Tyranny. Having obſerved the miſchief of abſolute Elections, he adds, 'Indeed 'I ſhould not wholly prefer *mere Succeſſion*, Election being quite taken away;

'away; but I think this manner of *Election* to be beſt, where great 'account is had of Blood, and no Son worthy to ſucceed his Father is 'put by. That the way of conſtituting Kings, mixt with Hereditary 'Succeſſion, and free Election, was very ſuitable to the manner of 'Ancient *Germany*, appears at leaſt from hence, that afrer that meer 'free Election had been introduc'd by *Hildebrand*, all things in *Ger-*'*many* were in Commotion and Diſorder.

CHAP. IX.

The Fourth Head of Poſitive Law.

A ſhort Recapitulation of what has been prov'd.. An actual Diſcharge of Oaths of Allegiance to J. 2. *ſhewn from the Authority of the Judgment paſt. His Uſurping a Legiſlative Power: Leaving the Kingdom without providing for the Adminiſtration of Juſtice; and going into* France. *This confirmed by* Raſtal, *Lord* Hobart, Juſtinian's *Digeſts. The Reſcript of* Theodoſius *and* Valentinian. Pufendorf de Officio hominis & civis. *His* Elementa Juris prudentiæ. *His Treatiſe* de Jure Gentium. Grotius. Pufendorf de Inter-regnis. Knichen's Opus Pol. Philip Paræus. *A particular conſideration of what the Learned Knight, Sir* R. Pointz *ſays, ſeeming againſt theſe Authorities, but ſhewn in truth to confirm them, and to bring the Rules of the* Civilians *to our ſide. That the Crown came not by Right of Deſcent to the next in Blood, after the diſcharge of the Allegiance to* J. 2. *The Arguments for the People's having been reſtor'd to that Liberty which they had before the Settlement of the Crown, enforc'd from a particular Conſideration of the State of the Settlement. Where it is ſhewn, how the word* Heirs *may be lookt on as reſtrain'd in the firſt Settlement on Heirs, by* Gomezius *his Rule. The Titles of* H. 6. E. 4. H. 7. *and* H. 8. *His ſeveral Settlements, and their effects in relation to the Queens* Mary *and* Elizabeth, *and* J. 1. *The Recognition to* J. 1. *not extending to his Heirs. And queſtion'd, Whether the Recognition was not his beſt, if not only Title. With a modeſt Inference.*

That the People of England *were lately reſtor'd to a qualified Choice.*

I Think I have with due regard to all colourable Objections, made it appear, That Allegiance may in ſome Caſes be withdrawn from one who had been King, till the occaſion of ſuch Withdrawing, or Judgment upon it.

And this I have done, not only from the Equity, and reſerved Caſes neceſſarily implied, but from the expreſs Original and continuing Contract between Prince and People; which with the Legal Judicature impowered to determine concerning it, I have likewiſe ſhewn, and exemplified by the Cuſtom of the Kingdom, both before the reputed Conqueſt, and ſince. And have occaſionally proved, That tho Oaths of Allegiance may reach to Heirs, according to ſpecial Limitations, as was 26 *Hen.* 8. yet in common intendment, by Heirs of a King or Crown, no more is meant, than ſuch as ſucceed to it according to the Law, poſitive, or implied. And that whoever comes to the Crown upon either, Allegiance is as much due to him by the Law of God

God and Nature, as it was to the nigheſt in Blood: Or to uſe the words of Biſhop *Sanderſon*, 'Dignity varies not with the change of 'Perſons: Whence, if any Subject or Soldier ſwear Fealty to his King 'or General, the Oath is to be meant to be made unto them alſo who 'ſucceed to that Dignity. Sanderſon de Obligatione Juramenti Lect. 4.

And when the Crown continues in the Blood, this eſpecially by what I have above-ſhewn, puts the Obligation of Allegiance to the King in being, out of Controverſie, unleſs it can be made appear, that the Right of the former King remains; or that there is ſome Settlement of the Crown yet in force, which ties it ſtrictly to the next.

I come now to prove, That the People of *England* are actually diſcharged from their Oaths of Allegiance to *J.* 2. and were lately reſtor'd to that Latitude of Choice which I have ſhewn to be their Original Right.

The Lords and Commons having a Judicial Power in this matter, as hath been prov'd at large; their Exerciſe of this Power, in the nature of the Thing, determines the Right, unleſs an Appeal lies from them to ſome higher Court in this Nation: But that no Power can legally queſtion them or any of them in this matter, appears more particularly in that there is no Statute now in force, (nor was ſince the Death of *Car.* 2.) which makes it Treaſon to conſpire to Depoſe a King, or actually to Depoſe him. But this is of the Nature of thoſe Common-Law-Treaſons which are left to the Judgment of Parliament. And they who are the only Judges of their own Actions have a pretty large liberty in them, eſpecially according to them who would infer the abſolute Power of Princes, from the ſuppoſition of no conſtituted Judges of their Actions. Wherefore the Defence of their Proceedings might juſtly ſeem to be ſuperſeded, were it not for an ungovernable ſort of men, who either cannot, or will not judg according to the Rules of Right Reaſoning; but as they will hardly admit of any Doctrine as true, for which they have not the Deciſion of ſome Father or Council; will believe no Action, not proceeding from their imperious Dictates, juſtifiable even in Caſes of the utmoſt neceſſity, for the preſervation of the true Religion and juſt Laws, for which they have no warrant from the Examples of their Forefathers, or Opinions of Men, whoſe Books have paſt with their Allowance: Which often drives me to the ſeeming Pedantry of Quotations, to confirm the moſt obvious Conſiderations to which my own thoughts led me. Vid. *Sir* Rob. Atkins *his Excellent Defence of the L.* Ruſſel, f. 22, 23.

The either open, or more covert Matters of Fact, inducing the Declaration of Lords and Commons, That *J.* 2. has broken the Original Contract, I need not now inquire into. All People muſt own that he has, if they in the leaſt attend to the Conſtitution of our Government, and how apparently he, by his general Diſpenſations, uſurp'd a Legiſlative Power for the Deſtruction of the Proteſtant Religion and Civil Rights; which we were in a fair way of being Dragoon'd out of by a ſtanding Army, by degrees to have been totally under Popiſh, or Complying, Officers. Yet if there were no more than his Leaving the Kingdom, without making any Proviſion for keeping up the Juſtice of it, and going into *France*, a Country from whence all miſchiefs have of late Years flow'd upon us and our Religion, Who can deny but this alone would have been enough to ſet

Raſtal's *Entries* tit. Reattachment f. 544. *b.* Reſum. &c.

him aſide? The going out of the Realm without appointing a *Cuſtos*, was anciently in our Law a Diſcontinuance of Juſtice.

quia extra Regnum Angliæ progreſ. fecimus, nullo locum tenente noſtrum ſive Cuſtode Regni relicto, &c.

Hobart f. 155.

And the Lord *Hobart* gives it as a Maxim, *Ceſſa Regnare, ſi non vis Judicare:* 'Ceaſe to Reign, if you will not judg, or maintain the 'Courſe of Juſtice.

Vid. Leges 12. Tab. de Magiſtrat.

Many, I know, upon theſe Queſtions rather regard the Civil Law; and that, I am ſure, gives a home thruſt, in the Caſe of deſerting one's Country, and going into ſuch an one as *France* is to our Nation, tho it has been in too ſtrict Alliance with our Kings.

The *Digeſts* ſay,

Digeſt. lib. 49. tit. 15. De Captivis & Poſtliminio. Transfugæ nullum poſtliminium eſt, nam qui malo Conſilio & Proditoris animo patriam reliquit, hoſtium numero

'A Deſerter has no Right of being reſtored to his Countrey: For 'he who left his Countrey with an evil and treacherous mind, is to be 'held as an Enemy, *&c.* But we are to take not only him for a De'ſerter, who runs over to Enemies in time of War, but alſo during a 'Truce: Or, Who runs over to them with whom there is no Amity, 'either after undertaking to be faithful to his Country, or elſe under'taking to be faithful to the other. Either of which ſenſes the words 'will bear.

habendus eſt, &c. transfuga autem non is ſolus accipiendus eſt, qui aut ad hoſtes aut in bello transfugit, ſed ad eos cum quibus nulla amicitia eſt fide ſuſceptâ transfugit.

'Tis likely to be ſaid, That this out of the Civil Law is improperly applied to the Prince, who according to that, is exempt from all Laws.

Imp. Theod. & Valentin. Cæſ. ad Voluſianum Præfectum Prætorio. Digna vox eſt Majeſtate Regnantis, Legibus adligatum ſe Principem profiteri.

But I would deſire ſuch, beſides what I have obſerved upon the *Roman Lex Regia*, to read the Reſcript of *Theodoſius* and *Valentinian*, wherein they thus declare: 'Tis an Expreſſion ſuitable to the Dignity of one that 'Reigns, to profeſs himſelf bound by the Laws. Our own Authority does 'ſo depend upon the Authority of Law. And in truth for the Governing 'Power to ſubmit to Law, is greater than Empire. And by the Pro'mulgation of this preſent Edict, we make known to others, what 'we will not allow our ſelves.

Adeo de auctoritate juris noſtra pendet auctoritas: & re verâ majus imperio eſt ſubmittere Legibus principatum. Et oraculo præſentis Edicti, quod nobis licere non patimur aliis indicamus.

That *J.* 2. had before his Departure, broken the Fundamental Laws, and that now he not only ceaſes to protect, but before the Judgment paſs'd upon the Breach, was in a Kingdom which foments and ſtrengthens a Rebellion in *Ireland*, part of the Dominions belonging to the *Engliſh* Crown, I think no body will deny. Nor till they can anſwer what I have ſhewn of the mutual Contract, continued down from the firſt Erection of the Monarchy here, ought they to deny, that he thereby broke the Original Contract, which bound the People to him, and him to them. What reſults from this Breach, is now more particularly to be conſidered. That it is a Diſcharge from all Allegiance to him requir'd by any Law, and confirmed by any Oaths, is evident, not only from the former Authorities, but

but from the Condition going along with ſuch a mutual Contract, as I have prov'd to be with us between Prince and People. Or rather to uſe the Words of the Learned *Pufendorf*,

'The Obligation is not ſo much diſſolv'd, as broken off, by the 'perfidiouſneſs of either Party; for when one does not perform that 'which was agreed on, neither is the other bound to performance: 'For the *Prior* Heads of things to be perform'd in Contracts, are in 'the ſubſequent, by way of Condition. As if it ſhould be ſaid, I will 'perform, if you will perform firſt.

Pufendorf, de Officio Hominis & Civis, *p.* 201.

This he more fully explains in another Book, where he diſtinguiſhes between an Obligation *imperfectly mutual*, as he ſuppoſes it to be between an *Abſolute* Prince and his Subjects; and one *perfectly mutual*, as he takes it to be, where the People have conferr'd a Power on any Terms.

Pufend. Elementa Juris prudentiæ, p. 85, & 94. Vid. Puf Supr. de Interregnis, *p.* 274.

Of ſuch Obligations, he ſays,

'Theſe, ſince they have a mutual reſpect to the things agreed on, 'and ſuppoſe mutual Faith; it is evident, That if one Party violate 'the Faith which he plighted, the other is no more bound: And 'therefore he is not perfidious, who ſtands not to thoſe Contracts 'which the other has broken. For all the Heads of one and the 'ſame Contract run into each other by way of Condition, *&c.*

Pufend. Elementa Juris prud. *p.* 94.

In that Book of his which is counted the Standard of the Law of Nations, he aſſerts it to be lawful for Subjects to oppoſe their Prince by Force (which is a ſufficient departure from Allegiance) if he goes about, *Modum habendi poteſtatem immutare, i. e.* to change that Manner in which he, by the Contract, enjoys the Power, from leſs to more abſolute.

Pufend. de Jure Gentium, *p.* 1105.

V. Grot. de Jure Belli & Pacis, de ſummitatem habendi plenitudine, *p.* 62. Diſſertationes de Interreg. *p.* 272. Supra.

And in his Tract *de Interregnis*, cited above, he allows of this; 'If the King abdicate all Care of the Commonwealth, becomes of an 'hoſtile mind towards his Subjects, or *manifeſtly departs* from thoſe 'Rules of Governing, upon the obſervance of which, as upon a Con'dition the Subjects have ſuſpended their Obedience.

Nor is the *German* Author, *Knichin*, leſs plain; whoſe Words are,

'If the Magiſtrate have abſolute and full Majeſty, due Subjection 'ought by no means to be denied him, thô he be impious; Nor may 'he be caſt out, and another ſubſtituted in his room: Much leſs can 'a new form of Government be introduced. But if he were Conſti'tuted by the People *under certain Pacts and Promiſes ſworn to him by* 'the People, and therefore is bound to certain Rules of Laws, and ei'ther to do or avoid any thing contain'd in thoſe Contracts, whe'ther Fundamental Laws, or things particularly concerted, (as for 'Example, the Emperor in our Empire:) They not being obſerv'd, 'but ſtudiouſly, enormouſly, and obſtinately violated; the hopes of 'amendment, after many of the Subjects Prayers and Admonitions, 'plainly vaniſhing; he *may rightfully be removed* by the States and 'People, *&c.* The Reaſon is, becauſe he was Promoted to the Go'vernment by ſuch Agreement, and that ſworn to, according to the 'Laws of the Agreement or Contract: The Nature of which con'ſiſts in this, That if that Party for whoſe ſake or cauſe they are 'Conſtituted, violate them, the other Party, of very Right, is freed 'from the Obſervance of thoſe things which are granted by ſuch 'Laws.

Rudolphi Godofredi Knichen opus polit. f. 1226.

Nor

Philippi Paræi Vindicatio, *p.* 50, and 51.

Nor does *Philip Paræus* come ſhort of this, in his Defence of his Father *David*, where he ſpeaks very particularly of the Effect of the mutual Compact.

Sir R. Poyntz *his Vindication of Monarchy. Ed.* Anno. 1661.

What is ſaid by the Learned Knight Sir *Robert Poyntz*, to diſable ſuch Authorities as I have Cited, in truth confirms them.

The Doctrine of the Civilians, concerning the nature of Contracts, he handles with Judgment; but if he fails in applying their Diſtinctions, the Foundation of our Government being different from that which he goes upon, then he will prove an Authority on my ſide.

P. 86. 'The Doctors of the Law, ſays he, are much perplexed in debating 'theſe two Rules in Law, One is, That *in vain he requireth the per-* '*formance of a promiſe or contract, to whom he refuſeth the performance* 'of that which he ought on his part to perform. The other is, That a 'Man *is not bound to perform his Oath, if that be not performed in con-* '*ſideration whereof he did ſwear.* And unto theſe Rules they aſſign 'divers Exceptions and Limitations: One is, That [*regularly*] *ubi con-tractus eſt perfectus, &c.* and *a mutual Obligation ariſes, 'tis not reſcind-ed by the failure of either Party:* And that in *contractibus innominatis*, 'Innominal Contracts, ſuch as are without any Condition expreſſed, P. 86. 'it is not lawful *agere ad reſolutionem Contractûs*, to act towards the 'Diſſolution of the Contract, by reaſon of a Contravention on one 'ſide, *ſed vel ad implementum contractûs, vel ad intereſſe*; but either 'towards the compelling performance, or the obtaining ſatisfaction 'for the breach.

The Contract between Prince and People, he ſuppoſes to be both,

1. A perfect Contract, and
2. An innominal one;

Conſequently indiſſoluble, notwithſtanding any Breach on the King's ſide. But if it be look'd on barely as a perfect Contract, without Conſideration of its being without Condition expreſſed; by the ſame Reaſon, even the Rebellion of a Subject would not diſcharge the King's Duty to protect him, any more than the King's ſubverting the Conſtitution will diſcharge the Subjects Allegiance: Which ſhews, that this is meant only of Inſtances which are not of the Eſſence of the Contract. And this is implied in reſtraining the aſſertion with the word [*Regularly*], to Matters within the ordinarily Rule.

But conſider theſe ſeverally,

1. By *perfect Contracts*, muſt be meant ſuch, wherein the Obligations are fixed and compleated at the beginning, or from the nature of the Relation entred into. And he ſays notwithſtanding, 'The 'Diſtinctions and Limitations in Contracts and Obligations Civil, all 'agree, That in thoſe Duties which are mutual by the Laws of God 'and Nature, as between the Father and the Son, the Husband and 'the Wife, the Lord and his Vaſſal, the Prince and his Subjects; the 'breach of Duty in the one, is no diſcharge unto the other.

Not to obſerve how extenſive he makes that Law of God or Nature which aſcertains the Lords right over his Vaſſal, and the Princes over his Subjects, I much queſtion, Whether all agree that his Rule holds in ſuch Caſes as deſtroy the very nature of the Relation, as the Adultery of the Wife, or the like: However himſelf yields that there may be an Obligation ſuperiour to theſe; for having produced Exam-P. 96. ples of Paſſive Obedience, he ſays, '*We cannot here ground an Argu-*

'*ment*

'*ment for juſtifying obedience to all Tyrants and invaders of our Country. Omnes enim omnium Charitates una Patria complexa & ſupergreſſa eſt, &c. filius ſine ſcelere, Proditorem Patriæ, licet Pater ſit occidit. In omni tempore bellum gerendum ſit pro Defenſione ſuâ, & Patriæ, & Legum Patriæ.*

'For our Country alone comprehends, and goes beyond, all private 'affections. A Son, without ſin, kills a Traitor to his Country, *tho* '*he be his Father.* At all times War may be waged in Defence of ones ſelf, ones Country, and the Laws of ones Country.

He owns expreſly, that Obedience is ſo far from being due to a Tyrant, that it is not juſtifiable. And he could not but know, that the *Civilians*, whoſe Rules he receives and applies, under this Apellation include as well one who (*a*) having a lawful Title to Power uſes it unjuſtly, as one who uſurps Power without any Title, or other than what is unjuſt and illegal.

(*a*) Vid. Comment. de Regno aut quovis principatu rectè & tranquillè Adminiſtrando. Adverſ. Machiavellum Ed. A°. 1577. *p.* 248. Bartolus duas ſpecies tyrannorum Statuit, quarum unam

Wherefore, ſince he makes no Diſtinction of Tyrants, 'tis not to be doubted, but he, with the *Civilians*, particularly the Learned *Bartolus*, diſcharges all Obedience, and conſequently Allegiance, the Legal tye of Duty, to a Tyrant in the exerciſe of Power, as well as in Title. Of both theſe, *Bartolus*, as a Judicious Author, repreſents his ſenſe; held, That Obedience is not due to them; but that they are to be thruſt out of the Government.

juris ſeu tituli, alteram exercitii ſive uſûs vocat. Tyrannus titulo is eſt, inquit, qui ſine ullo jure, aut iniquo & minimè legitimo titulo Principatum invadit; Tyrannus exercitio ſive uſu is eſt, qui legitimum quidem jus ad principatum habet, ſed eum injuſtè & contra Leges exercet. Itaq; demum Statuit ejuſmodi Tyrannis obſequium non deberi: Sed è Magiſtratu deturbandos eſſe. Ib. f. 249.

And the deſervedly eſteemed Great Man, *Mornay du Pleſſis*, in his Treatiſe of the Church, cites *Zabarel*, *Baldus* and *Bartolus* for the ſame diſtinction of Tyrants. Nay, obſerves that theſe Lawyers, thô Papiſts, held, that even *Popes* might be Tyrants, in either of theſe reſpects.

Tractatus de Eccleſ. per Phil. Mornæum, *p.* 68.

2. *As to the innominal Contracts*, *Sir Roger's* Rule is, That the Breach of one, will not juſtify the other, to proceed towards the diſſolving of the Contract, which comes not up to any Caſe which does *ipſo facto* diſſolve it. Beſides, this notwithſtanding, there may be either a Diſſolution of the Contract, a compelling to perform, or ſatisfaction taken. According to which in all Caſes wherein the two laſt are inſufficient, a Diſſolution of the Contract ought or may follow. But farther, the fixt Obligation of the Subject, whatever the King ſhall do contrary to the Contract, is by him founded upon the ſuppoſition, either that the People of *England* have transfer'd the Power of the Nation to their Kings, as abſolutely as he ſuppoſes that the People of *Rome* had done to their Emperors; or rather that *W.* 1. made a Conqueſt of this Nation.

Vid. Sup.

'If, ſays he, we cannot find any Law or Reaſon, that the *Romans* 'or any other People, who had in them the Supream Power, could, '*after they had transferr'd this Power to Kings, and elected them*, reaſ-'ſume this Power again, and *when it doth pleaſe them, depoſe* their 'Kings, or *limit and reſtrain their Power* by vertue of an habitual 'Power ſtill remaining in the People, as is ſuppos'd; then undoubted-

Sir Roger Poyntz, *p.* 123.

Vid. *the puniſhment which the Senate decreed againſt* Nero, *More majorum.*

'ly we can find no Right in the People, or in any Societies or Com-'munities of People, to Depoſe, Reſtrain, or Limit Kings of hereditary 'Succeſſion, *eſpecially thoſe who have not their Right from the People,* 'but by *Conqueſt, as in England.*

'From ſuch Kings of Hereditary Succeſſion and Right, all Juriſ-'dictions do proceed, and in them reſide; and unto them they re-'turn, ſay the Lawyers, *Rex eſt lex animata:* And his Office and 'Function is, *Indefinens conſulatus.* All other Rights and Liberties 'whatſoever, have been, as in other Kingdoms, at *the Will and Mercy* 'of the Conquerors of our Iſland, the *Romans, Saxons, Danes, Nor-'mans:* Our Rights and Liberties contain'd in **Magna Charta** grant-'ed and confirmed by divers Kings, after much effuſion of Blood we, nor 'our Anceſtors did, nor could ever claim by *Virtue of any Reſervation made by the People, or any others,* when they were Conquer'd. Neither by any Original Right inſeparably *inherent and veſted in the People, and from them deriv'd.*

Here 'tis obſervable,

1. That thô Sir *Roger* will not have any *Original* Right to be *inſeparable* from the People; yet he owns, that in ſome places they may have Elected Kings, and have had Supream Power in them, till they transferr'd it to their Kings: Contrary to Mr. *Sherringham*, who to make his Court at the coming in of *C.* 2. held, that all Authority is *originally in Kings, or other Supream Magiſtrates themſelves, immediately from God,* **Tanquam in primo creato Subjecto,** as in the firſt created Subject.

Sherringham's *Supremacy aſſerted. Introduct.* p. 11.

2. Sir *Roger* with that *Divine*, holds, that *W.* 1. *obtain'd the Crown by Conqueſt.* Mr. *Sherringham* indeed owns, that there was a *compoſition and agreement*; but will have it, that this was *not till after a Victory:* as if the Victory over *Harold* made a Conqueſt of the Nation. Of which, more in its place.

Sher. p. 53. Vid. 2d *Part.*

3. Sir *Roger* goes no more beyond our Caſe, when he argues upon ſuppoſition of a total Tranſlation of the Power, whereby a People or Nation is Govern'd, than he does in arguing againſt the People's Reaſſuming this *Power again, and Depoſing their Kings,* **when it doth pleaſe them.**

4. Sir *Roger*'s Argument upon a Suppoſition of either a total Tranſlation of the Power, or Conqueſt, as much deſtroys the Power of Reſtraining and Limiting, as of Depoſing Kings. If it be ſaid, That 'tis all to be intended only of Actions of the People, without the Conſent of their Kings; if he will allow that Kings may by their own Conſent be ſet aſide as well as Limited, then whatever voluntary Actions of theirs imply a Renunciation of Government, will as much diſcharge the Subjects, as their expreſs Conſent.

Sir Roger Poyntz, p. 86.

He admits, that where there is no ſuch *total Tranſlation* of the Power, and no *Conqueſt*, the People may claim Liberties by virtue of a *Reſervation.* And then he brings the *Civilians* to our ſide, according to whom he confeſſes, That '*In divers Promiſes* and Tranſactions, and in 'Leagues and Truces (yet, ſays he, this of Truces is much Controverted) '*the Breach of one Party is holden to be a Diſcharge of the other* from 'the whole Obligation: Upon this Reaſon,

Quia ſingula capita conventionis inſunt conventioni per modum mutuæ contemplationis, & correſpectivè poſita ſunt, nec debet contractus claudicare

ex

ex unâ parte, ex uno latere, & fidem frangenti fidem non eſſe ſervandam: quod dictum referendum eſſe ad unam eandemque conventionem, & ad ea quæ unâ eâdemque ſponſione comprehenſa ſunt, & in promiſſionibus quarum altera alterius causâ facta eſt, cum connexorum ſit unum idemque judicium; ſed ſecus eſt in diverſis & ſeparatis.

Vid. *the ſame in* Pufend. ſup. f. 87.

'Becauſe all the Heads of the Agreement are included in it by way 'of mutual conſideration, and are plac'd with reſpect to each other. 'Nor ought a Contract to be lame on one part, on one ſide. And that 'Faith is not to be kept with him that breaks his Faith. But that this 'is to be referr'd to one and the ſame Agreement, and to thoſe things 'which are comprehended in one and the ſame Sponſion, and in pro-'miſes, one of which is the cauſe of the other; being of things con-'join'd, there is one and the ſame Judgment: But it is otherwiſe in 'things diverſe and ſeparated.

Upon the ſuppoſition that *W.* 1. made a real Conqueſt of the Nation; and that if he gave Terms, 'twas not till after a Conqueſt, I muſt own that no help can be had from theſe Rules: But if, on the other ſide, he was at firſt received upon terms, and had no right to govern the Nation till thoſe terms were ſetled, then I think I need not ſo far queſtion the Reader's Judgment, as to make particular application of theſe Rules to our Caſe with the late King.

But notwithſtanding the Diſcharge from Allegiance to *J.* 2. ſome will urge, That it continues to the Perſon that ſtands next in Blood.

Againſt which, I doubt not but I ſhall offer full Evidence. For,

1. If, as I have ſhewn, the Promiſe to the King himſelf be Conditional, and his Intereſt determines by his Breach of the Condition; be the Condition *precedent*, in which caſe no Intereſt is veſted till Performance: Or *ſubſequent*, in which, the Breach diveſts what before was ſetled: What Intereſt can the Heir have in a Conditional Eſtate determined by Breach of the Condition? And ſince it has been made appear, That the Heirs of a King with us, take not as Purchaſers by an Original Contract, (upon which there might be ſome pretence of an Intereſt veſted in them, independent on their Father's Title); but they who can be ſaid to have ſucceeded without an immediate Choice, did it by virtue of ſubſequent Settlements, entirely depending upon the Original Contract, continuing down to their immediate Anceſtors reſpectively; If that Contract be diſſolv'd, what can ſupport the Settlement? Can the Agreement for the benefit of a King and his Poſterity, be ſuppos'd to be other, than that if he govern them as King, performing the Eſſentials of the Contract on his part, he and his Deſcendants ſhall enjoy the Crown? Can it be imagin'd that this was made for the ſeparate benefit of the Heir, without regard to the Anceſtor's Performance? Or is it to be ſuppos'd in the nature of the thing, that the People would have made ſuch a Contract, whereby, after being juſtly diſcharged from their Allegiance to a King, and having acted purſuant thereto, they ſhall enable a Succeſſor to revenge his Anceſtor's Quarrel? This were ſuch a Contract as that which the Lord *Clarendon* aſſures us, *if never ſo real, can never be ſuppos'd to be with the intention of the Contractor.* And *Grotius* argues againſt a King's Power of aliening his Kingdom, from hence, that this is not to be preſum'd to have been the will of the People in conferring the Power. And in another place he ſays, 'Right is

Vid. Brook tit. Condition, n. 67.

Vid. Lit. c. 5. Eſtates ſur Condition.

V. L. Clarendon, *cited above in the Margin, his Survey of the* Leviathan, *p.* 86.

Grot. de Jure belli & pacis l. 1. c. 3. p. 60.

'to

Grot.ſup.p.64. ‘ to be meaſured according to the Will of him from whom the Right ‘ ariſes.

2. The Power of the King, as *Forteſcue* has it, and the Authorities above plainly evince, is a *Populo effluxa*, ‘ derived from the People.

Vid. 11 H 6 f. 12. b. Rolls Abr. tit Remainder f. 415.

And the Intereſt of *J.* 2. being determined, he yet living, ſo that there can be no Heir to him, or of his body; What hinders the operation of the known Rule in Law, That where there is no Remainder to take effect at the determination of the particular Eſtate, it ſhall revert to the Donor? Which in this Caſe is manifeſtly the People.

If it be ſaid, That this Rule ſhall not extend to the Deſcent of the Crown, which differs from common Inheritances; I dare ſay, No man can ſhew any difference, but what is more ſtrong for the Peoples Choice. For whereas common Eſtates are for the benefit of them who have the preſent Intereſt, the Crown is a Truſt for the benefit of the People.

V. ſup. Knighton f. 2683.

3. The ancient Statute above-mentioned, of which the Lords and Commons mind *R.* 2. upon his Male-adminiſtration, ſays, That for the Cauſes there expreſt, they may with the common Aſſent and Conſent of the Nation, ſet upon the Throne in his ſtead, *propinquiorem aliquem de ſtirpe Regiâ*: ‘ Some body of Kin to the King, of the Stock Royal. If they were tied to the next, it certainly would have been *proximum*: Beſides, the word *aliquem* ſhews a Latitude. And according to this, upon *R.* the ſecond's being Depoſed, *H.* 4. claimed the Crown, **Als deſcendit be ryght Lyne of the Blode comeynge fro the gude Lord** Henry **Therde.** But becauſe this, without conſideration of his Merits in reſcuing them from *R.* 2. entituled him to the Crown, no more than another of the Blood; therefore the Lords and Commons drew up an Inſtrument purporting *their Election.*

Nota. Not Proximum.

Rot. Parl. 1 H. 4. n. 54.

Ib. n. 55.

4. But admit none of the foregoing Arguments were enough to ſhew, That upon *James* the ſecond's *Abdication*, or at leaſt loſing his Intereſt in the Government, the People of *England* were reſtor'd to that Liberty which they had before the Settlement of the Crown, which was in force till the Original Contract was broken by him; yet I conceive the particular Conſideration of the ſtate of the Settlement, might afford ſufficient Argument.

Brady's *Hiſt. of the Succeſſion.* f. 25.

Henry the Fourth, Fifth, and Sixth, if we believe Dr. *Brady*, held the Crown by Uſurpation: Yet the earlieſt Settlement of the Crown farther than the firſt Son or Grandſon, was in the time of *H.* 4. Nor, as I ſhall ſhew, was the Crown enjoyed by *J.* 2. under better Title than they had. *H.* 5. and 6. came in under an Entail of the Crown; 7 *H.* 4. confirm'd 8. The miſgovernment of *H.* 6. having given occaſion to *Richard* Duke of *York* of the Blood-Royal, and Elder-houſe, to aſſert the Peoples Rights, not his own, *Henry* and the Duke, with the Conſent of the Lords and Commons, come to an agreement in Parliament, That *Richard* and his Heirs ſhould enjoy the Crown after the Death of *Henry.* Tho here the word *Heirs* is mentioned without reſtraint, yet conſidering that it is the firſt time that ever the Crown was ſetled ſo far, I know not whether it is not to be taken with *Gomezius* his Reſtriction, of an Uſufructuary or Emphyteutical

Vid. Rot. Parl. 8 H. 4. n. 60.

Gomezius de Qualitatibus Contractuum, f. 319. rumſubſtantiâ.

Hottomanni Com. de Verbis Juris uſus-fructus eſt jus alienis rebus utendi fruendi, ſalvâ re- Emphyteuſis.

Eſtate;

Eſtate; of the laſt of which, much of the ſame nature with the other, he ſays, "If it did not uſe to be granted to more than the firſt, ſecond, "or third *Heirs*, the mention of *Heirs* ſimply, ought to be reſtrain'd "to thoſe only; becauſe the Nature or Quality of the thing granted, "ought to be attended to.

After the Death of *Richard* Duke of *York*, his Son *Edward* the Fourth, as I before obſerv'd, took the Government upon him, as forfeited by breach of the *Covenant eſtabiſh'd in Parliament.* However, *H.* 6. being ſet up again ten Years after, gets that Settlement by which *E.* 4. was to have benefit, to be revok'd, and the Crown to be entail'd on his Iſſue; the Remainder to the Duke of *Clarence*, younger Son to the Duke of *York*. Afterwards *E.* 4. having ſucceſs, revives the Settlement 39 *H.* 6. Only that he attaints *H.* 6. with others of his Party. Which Attainder was remov'd 1 *H.* 7. and declar'd *contrary to due Allegiance, and all due Order.* And not only the Attainder, but that Act of Parliament it ſelf was revok'd. So that hitherto there had been no Title in the Heirs of *Richard* Duke of *York*, or of *Edward* the Fourth, but what was deriv'd under the Settlement of *Henry* 6. call'd an Uſurper, and *Edward* the Fourth's Treaſon depriv'd him of the Benefit even of that Settlement.

Vid. ſup.

13 E. 4.

Rot. Parl. 1 H. 7. n, 16. Vid. Append. H. 7. *Son to* Edmund *Earl of* Richmond, *Brother by Mother's Side to* H. 6.

H. 7. Indeed married the eldeſt Daughter of *E.* 4. But before that Marriage, having conquer'd *Rich.* 3. he claimed the Crown, as his Words in Parliament were, *Tam per juſtum titulum hæreditantiæ; quam per verum Dei judicium, in tribuendo ſibi Victoriam de inimico ſuo*; "As well by juſt Title of Inheritance, as by the true Judgment "of God, in giving him the Victory over his Enemy.

Rot. Parl. 1 H. 7. Vid. Append.

If it be ask'd, how he could have a Right of Inheritance, when the Daughter of *E.* 4. and his own Mother were alive; it ſeems in the Judgment of that Parliament, That *E.* 4. having acted contrary to his Allegiance due to *H.* 6. he and his had loſt the Benefit of the Settlement reviv'd by his ſucceſsful Treaſon; and that this was loſt, even before the Revival was deſtroy'd by Parliament. And then, tho' *H.* 7. could not come in without an Election; yet he, as *H.* 4. before, might have a ſort of Inheritance; according to a very witty Author, who ſpeaking of the Kingdom of *Iſrael*, ſays, *Concludere licet, regnum Iſraelis, ſi ſtirpem ſpectas, hæreditarium certè fuiſſe; at ſanè ſi perſonas, omnino electivum*; "We may conclude, That the Kingdom of *Iſrael*, if "you look at the Stock, was certainly Hereditary; but if at the Per-"ſons, altogether Elective.

Vid. Rot. Parl. 1 H. 7. n. 16. ſupra.

Vindiciæ contra Tyrannos, Ed. Amſtelodami, *p.* 110.

Be this as it will, the Lords and Commons ſo far regarded King *Henry*'s Claim, that they not only receiv'd him for King, but it was enacted by the Authority of the then Parliament, *That the Crowns of the Realms of* England *and* France *ſhould reſt in him and the Heirs of his Body lawfully coming, perpetually; and in* NONE OTHER.

Rot. Parl. 1 H. 7.

When they had thus done, the Commons requeſted the King to Marry *Elizabeth* Daughter to *E.* 4. *that by God's Grace there might be Iſſue of the Stock of their Kings.* So that this was only to preſerve the Royal Blood, not to give any new Countenance or Confirmation to his Title.

H. 8. enjoy'd the Crown, not as Heir to his Mother, but under the Settlement upon *H.* 7. Nor can it be ſaid, that he was in by Remitter, ſince that Act under which his Mother ſhould have deriv'd, was Re-

peal'd: And had it ſtood in force, yet it would not have made the Title more Sacred; unleſs it can be ſhewn, that the Mother had a Title *prior* to the Act of Settlement 39 *H.* 6. the contrary to which appears by the former Account, from Law and Hiſtory.

25 H. 8. c. 22. *H.* 8. procur'd ſeveral Settlements of the Crown, according as Love or Jealouſie prevail'd in him. In the 25th of his Reign, 'twas ſettled upon Himſelf, and the Heirs Male of his Body, lawfully begotten on Queen *Anne*, *&c.* declaring the Marriage with Queen *Katherine* unlawful; Remainder to the Lady *Elizabeth*, Remainder to his own *Right Heirs*. 26 *H.* 8. an Oath was enjoyn'd for that purpoſe. 28 *H.* 8. the two former Acts 25 & 26 are Repeal'd, the Illegitimation of *Mary* Daughter to Queen *Katherine* is confirmed; the like declared of *Elizabeth* Daughter to Queen *Anne*; and the Crown entail'd upon his Heirs Males by Queen *Jane*, or any other Wife; Remainder to Heirs Females by that Queen, or any other lawful Wife; Remainder to ſuch Perſon or Perſons, and according to ſuch Eſtates as he ſhould appoint by *Letters Patent, or by Will.* 35. the Crown is ſettled ſubject to ſuch Conditions as the King ſhould make, according to the Power there given; firſt, upon Prince *Edward*, and the Heirs of his Body: the Remainder, in like manner, upon the Ladies *Mary* and *Elizabeth*, and the Heirs of their Bodies ſucceſſively, without taking off their Illegitimations. And the ſame Power is given of diſpoſing by Letters Patent, or by Will, as by the Statute 28. for which a memorable Reaſon is given in both Acts; *Leſt if ſuch Heirs ſhould fail, and no Proviſion made in the King's Life, who ſhould Rule and Govern this Realm, for lack of ſuch Heirs,* as in thoſe Acts is mentioned, *that then this Realm ſhould be deſtitute of a Lawful Governour.* *E.* 6. ſucceeded according to both thoſe Acts: After him, Queen *Mary*, by the laſt; who, at her coming to the Crown, could not be looked on as of the Right Line, becauſe of the Acts which Illegitimated her; and beſides, ſhe was but of the Half-blood to *E.* 6. to whom ſhe ſucceeded. But in the firſt of her Reign, the ſame Parliament takes off her Illegitimation, and repeals the Acts 25 & 28 *H.* 8. And in this the Parliament ſeems rather to provide for the Honour of her Deſcent, than (as Dr. *Brady* would have it) to declare the *Succeſſion to be in Inheritance by Right of Blood.* Whatever might be the ſecret Intention, I am ſure there is no ſuch authoritative Declaration: And the Acts 28 & 35 *H.* 8. ſeem to ſay quite the contrary. 1 & 2 *P. M.* though there is no direct Settlement, it is made Treaſon to *compaſs* the Deprivation or Deſtruction of K. *P.* during the Queen's Life; or of the Queen, or of the Heirs of her Body lawfully begotten. Queen *Elizabeth* ſucceeded by vertue of the Limitation 35 *H.* 8. And though Baſtardiz'd by the Statutes 28 *H.* 8. and 1 *M.* and but of the Half-blood both to *E.* 6. and Queen *Mary*, yet her firſt Parliament declares, That ſhe is *Rightly, Lineally, and Lawfully* deſcended and come of the *Blood Royal* of this Realm; to whom, and the Heirs of her Body, the Royal Dignity, *&c* are and ſhall be united: And Enacts, That the Statute 35 *H.* 8. ſhall be the Law of the Kingdom for ever. But the Fee of the Crown not having been diſpoſed of, according to the Power given by the Statute 28, and repeated 35 *H.* 8. And the 25, whereby it was limitted in Remainder to the Heirs of *Henry* the 8th. being

Vid. 28 H. 8. ſup. & 35 H. 8.

Hiſt. of Succeſſion, f. 34.

1 & 2 P. M. c. 9.

1 Eliz. c. 3.

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ing repealed; upon the Death of *Edward* the 6th, and the Queens, *Mary* and *Elizabeth* without Iſſue, there remaining no Heirs of the Body of *H.* 8; in the Judgment of two Parliaments, the Realm was deſtitute of a *Lawful Governour.*

Indeed, according to the Act of Recognition, 1 *J.* 1. the Crown came to him, being *lineally, rightfully, and lawfully deſcended of the Body of the moſt Excellent Lady* Margaret, *the eldeſt Daughter of the moſt Renowned King* Henry *the Seventh, and the High and Noble Princeſs, Queen* Elizabeth *his Wife, eldeſt Daughter of King* Edward *the Fourth: The ſaid Lady* Margaret *being eldeſt Siſter of King* Henry *the Eighth, Father of the High and Mighty Princeſs of Famous Memory*, Elizabeth *late Queen of* England. 1 Jac. 1. c. 1.

Thô this pompous Pedigree, to avoid all Objections, goes as high as *E.* 4. the Derivation of Title, as appears above, can be no higher than from the Settlement 1 *H.* 7. Nor does this Act 1 *J.* make any additional Proviſion; but indeed ſeems to flatter the King into a Belief, that there was no need of any; telling him, That they made that Recognition as the *Firſt-fruits of their Loyalty and Faith to him, and his Royal Progeny and Poſterity for ever.* But neither then, or ever after, till that in this preſent Parliament, did the People make any Settlement of the Crown, but it continued upon the ſame Foot as it did 1 *H.* 7. when it was entirely an Act of the People, under no Obligation, but from their own Wills. And if we ſhould uſe Sir *Robert Filmer*'s Authority, 'Impoſſible it is in Nature for Men to give a Law 'unto themſelves, no more than it is to command a Mans ſelf in a 'Matter depending of his own Will. There can be no Obligation 'which taketh State from the meer Will of him that promiſes the 'ſame. *Sir* Robert Filmer's *Power of Kings*, f. 1.

Wherefore, to apply this Rule: Since the People that is now, in common preſumption is the ſame with that which firſt ſettled the Succeſſion, and ſo are bound only by an Act of their own Will; they have yet as arbitrary a Power in this Matter, as Sir *Robert* and his Followers contend that the Prince has, whatever Promiſes or Agreements he has entred into. Vid. Pufend. de Interregn. ſup. p. 288, 289.

But not to lean upon ſuch a broken Reed, nor yet to make thoſe many Inferences which this plain State of the Settlements of the Crown might afford; Three things I ſhall obſerve:

1. If the Settlement made 1 *H.* 7. who was an Uſurper, according to the Notion of Dr. *Brady*, and his Set of Men, was of no force; then, there being no Remainders, ſince limited by any act, but what are ſpent, and no deſcendants of the whole Blood from *Elizabeth*, Daughter to *E.* 4. and Wife to *H.* 7. but by Daughters, the eldeſt of which was Married into *Scotland*; If Acts of Settlement could not alter the Right of Deſcent of the Crown, neither *Queen Mary*, nor *Queen Elizabeth* had Right, but after the death of *E.* 6. it belonged to the *Scotch* Family. And if Acts of Settlement could diſpoſe of the Crown, and it ſhould appear that from the time that the limitation came to a Foreigner not nam'd in the Settlement, nor the immediate iſſue of a King or Queen of *England*, it was ſpent in the eye of the Law; then of neceſſity the People muſt have had Power of Chuſing, or there could have been no lawful Government ſince Queen *Elizabeth*'s time, when the laſt Settlement was ſpent, except what is now made.

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2. The Declarations of two Parliaments, 28 and 35 *H.* 8. fully ballance the Declaration 1 *Jac.* 1. if they do not turn the Scales; conſidering, that the Judges in the later Times ſeem to have had leſs Law or Integrity than they had in *H.* the Eighth's. I will not take upon me to determine which was the Point of Two that they might go upon. 1. That a Government ſhall not paſs by Implication, or by reaſon of a dormant Remainder. But there having been ſo many Alterations ſince the Settlement 1 *H.* 7. and the whole Fee once diſpoſed of, nor ever any expreſs Reſtitution of the Settlement 1 *H.* 7. the People were not to think themſelves obliged to a Retroſpect: 'Tis evident, at leaſt, that they did not. Or, 2. Perhaps they might queſtion, whether they were oblig'd to receive for Kings the Iſſue of Foreign Princes, ſince there was no means of being ſufficiently inform'd of the Circumſtances of the Birth, neither the Common, or any Statute-Law affording any Means of proving it, as appears by the Statute 25 *E.* 3. which for the Children of Subjects only, born out of the King's Allegiance, in Caſes wherein the Biſhop has Conuſance, allows of a Certificate from the Biſhop of the Place where the Land in queſtion lies, if the Mother paſs'd the Seas by the King's Licenſe. But if our Kings or Queens ſhould upon any occaſion be in Foreign Parts, 'tis to be preſum'd, that they would have with them a Retinue ſubject to our Laws, who might atteſt the Birth of their Children, and be puniſh'd if they ſwear falſly.

That this was a Queſtion in Q. Elizabeth's *time, appears by a Letter from* Lethington, *Secretary of* Scotland *to* Cecil, *Secretary to* Q. Eliz. *Appendix to Vol.* 2. *of the Hiſt. of the Ref.* f. 269. *This appears farther from the Treatiſe at the end of the Appendix, which ſeems to admit, That the Right to the Crown would have been in the iſſue of the younger Daughter, being born in* England, *if the Birth had been without blemiſh.*

Stat. 25. E. 3. Wherefore, 25 *E.* 3. 'tis declar'd to be *the Law of the Crown, That the Children of the Kings of* England, ENFANTZ DES ROYS, as the Record has it, *in whatever Parts they be born, be able, and ought to bear the Inheritance after the Death of their Anceſtors.* Yet this is moſt likely to be meant of thoſe private Inheritances which any of the Kings had, being no part of the Demeaſns of the Crown; ſince the Inheritance of the Crown was not mentioned, nor, as has been ſhewn, was it ſuch as the King's Children were abſolutely entitled to in their Order.

Vid. 1. Anderſon, f. 60, & 61. *A Deviſe to the Wife, after her Deceaſe to the Children:* Vid. Wild's C. 6. Rep. *In* Shelley's *C.* 1. *Rep.* f. 103. *A Gift to a Man* & ſemini ſuo, *or* proles ſuis, *or* liberis ſuis, *or* exitibus ſuis, *or* pueris ſuis de corpore.

The moſt common acceptation of *Children*, is of a Man's immediate Iſſue: As where Land is given to a Man and his Children, Who can think any remote Deſcendants entitled to it? Nor could it extend farther in the Settlement of a Crown.

Vid. *Sir* James Dalrimple's *Inſtitutions of the Laws of* Scotland, *f.* 52.

37 *E.* 3. *c.* 10. a Sumptuary Law was made, providing for the Habits of Men according to their Ranks, and of their Wives, and *Children, ENFANTZ*, as in the former Statute of the ſame Reign. Now altho' this ſhould extend to Childrens Children born in the ſame Houſe, it could never take in the Children of Daughters, *foriſfamiliated* by Marriage; nay, nor to thoſe of ſuch Sons as were educated in a diſtinct Calling from their Parents.

Farther, the very Statute of which the Queſtion is, cuts off the Deſcendants from Females out of the number of a King's *Children*, when among other *Children* not of the Royal Family, it makes a par-

 ticular

ticular Proviſion for *Henry* Son of *John Beaumond*, who had been born beyond Sea; and yet *Henry* was by the Mother's Side in the Fourth Degree from *H.* 3. for ſhe was Daughter to *Henry Earl of Lancaſter*, Son of *Edmund*, Son to *H.* 3. Had this *Henry* been counted among the *Children* of a King, 'tis certain there had not been a ſpecial Clauſe for him, among other Children of Subjects.

Vid. Dugdale's *Bar.* 2. *Vol.* Beaumont.

Nor does the Civil Law differ from ours in this Matter; for tho under the name of *Children*, are comprehended not only thoſe who are in our Power, but all who are in their own, either of the Female Sex, or deſcending from Females; yet the Daughters *Children* were always look'd on as out of the Grandfather's Family, according to the Rule in the Civil-Law, tranſcribed by our *Bracton*, 'They who are born of your 'Daughter, are not in your power: And Privileges derogating from '*Publick Utility*, were never thought to reach them, as a Learned *Civilian* has it: 'A Daughter is the end of the Family in which ſhe 'was born; becauſe the name of her Father's Family is not propoga-'ted by her. And *Cujacius* makes this difference betweene *Liberi*, and *Liberi Sui*; *Sui*, he ſays, is a Legal Name, the other Natural: The former are only they who are in a Man's power, or of his Family; and *Liberi* ſtrictly taken, he will have to go no farther.

Juſt. Inſt. lib. 1. tit. 9. *So* Bracton, l. 1. c. 9. Greg. Tholoſ. Syntagma juris univerſi, f. 206. Spiegelius, tit. *Liberi*. Non procedere in privilegiis quæ generaliter publicæ utilitati derogant. Vid. Antonii Perezi Inſt. Imperiales, p. 21. Vid. Cujac. ad tit. de verborum ſignificatione, p. 147, & 230.

But in truth, Conſidering the purview of the Statute which we are here upon, *Children* in it ſeems to be reſtrain'd to Sons and Daughters, without taking in the Deſcendants from either; the occaſion of the Law being the Births of ſeveral *ENFANTZ* in Foreign Parts, which could be but Sons or Daughters to the immediate Parents, whether Kings, or Private Perſons.

3. But however, this may be enough for my purpoſe, That there is no colour of any Settlement in force, but that 1 *H.* 7. And admitting that to have continued till *J.* 2. had broken the Original Contract; yet that being broken, the preſent Aſſembly of Lords and Commons had full as much Authority to declare for King *WILLIAM* and Queen *MARY*, as the Parliament 1 *H.* 7. had to Settle the Crown: For *H.* 7. could give them no Power, but what he had received immediately from them. Nor is it material to ſay, He was Crown'd firſt; ſince, as I have ſhewn, the Crown Confers no Power diſtinct from what is deriv'd either from an immediate, or prior Choice.

But if there is reaſon, from what I have ſhewn, to believe that even the limitations in *Henry* VII*th*'s. Settlement, were all long ſince ſpent; then at leaſt, it is not to be doubted but the intereſt of *J.* II. being determined, the People of *England* might *lawfully* and *rightfully* declare for King *William* and Queen *Mary*, as being the moſt deſerving of the *Blood Royal*; which if they were free to do, not to ſubmit to be Gover'n'd by Their preſent Majeſties, would have been the higheſt Ingratitude that could be.

CHAP. X.

The Fifth Head of Poſitive Law.

The effect of the Diſſolution of the Contract. The Uſe of the Triennial-Act 16 Car. 1. *againſt the neceſſity of Common Form. The Form and proceedings of the Convention aſſembled upon the death of* H. 3. *The Dilemma uſed by the Formaliſts, Anſwer'd, with a Diſtinction.* Pufendorf's *Anſwer to* Hobbs. *Another paſſage of his applied to a paſſage in a late excellent Treatiſe againſt Sir* Robert Filmer: *And to a Letter upon this Juncture. Tho what Dr.* Brady *ſays againſt the Rights of Lords and Commons, were true; yet it is ſhewn that the Acts of the late Aſſembly would be concluſive to the Nation. Neither Forty days Summons, nor Writs, nor yet Summons to a Parliament, Eſſential. And this confirmed, not only by the Preſident* 12 Car. 2. *but by two Preſidents of the time of* H. 1. *The Subjects in the time of* E. 1. *ſaid to have held a Parliament by themſelves, and of their own appointing. The Objection of want of Form, Anſwered out of the Civil-Law; and its Reaſon applied to our Caſe. Objections made by the Author of* Elementa Politica *conſidered. The Concluſion.*

THE Power, having upon the Diſſolution of the Contract between *J.* 2. and his former Subjects, returned to the People of Legal Intereſts in the Government, according to the Conſtitution; there can be no doubt with unbiaſſed Men, but this takes in them only who have Right of being in Perſon, or by Repreſentation in thoſe Aſſemblies where is the highest Exerciſe of the Supream Power. But there are two Extreams oppoſite to the late Election made by ſuch an Aſſembly. The Firſt is of them who would have all things go on in the ſame Form as under a Monarch, which was impoſſible; and therefore the Supream-Law, the Publick-Safety, muſt needs ſupply the want of Form. Nor can be juſtly controverted, till the Lawfulneſs of the end is diſprov'd. For all Means neceſſary to ſuch an End, are allowable in Nature, and by all Laws. But if this ſhould ſtill be diſputed, all their Darling-Laws made by the Long-Parliament, which met after that Convention, *Anno* 1660. will fall to the ground, according to the former application of the Statute above-mentioned, 16 *Car.* 1. Nay, the attempt of Repealing that Statute, being in a Parliament which had been actually Diſſolved before, by that very Law which it went about to Repeal, that Form which was uſual before, is, in default of King and Officers, ſupplied by another Proviſion for the Regular Meeting of Lords and Commons. And what hinders but the people had as much Power to vary from the Common Form, when there was no King, and that Form could not be obſerv'd, as when there was a King, and a poſſibility of having that Form?

Vid. Sup.

Here I may obſerve theſe two things:

1. If, as I have ſhewn at large, the Right of Succeſſion to the Crown, was not fixed to the next in Blood, neither before the reputed *Conqueſt*, nor ſince; if there have been ſeveral *vacancies* of the

Throne

Throne, and the People had right to chuſe upon every ſuch *Vacancy*, then whatever they did in order to the choice, muſt neceſſarily have been freed from the Forms which were required under a King.

2. Even where the Kingdom has gone by deſcent, there may have been a neceſſity for the people to take the Government upon them, as if the preſent Poſſeſſor has turned Madman, or he who ſtood next in the Succeſſion, were under age, without any Guardian appointed in the Life-time of his Father, or out of the land when his Father died, which were the caſes of *R.* 1. and of *E.* 1. the account of the laſt of which deſerves particular notice. The Annals of *Waverly* having mentioned the Death of *H.* 3. add,

Hoc anno, ſcilicet poſt Feſtum S. Hillarii, facta convocatione omnium Prel. & aliorum Magnatum Regni apud Weſtm. poſtmortem illuſtris Regis H. convenerunt Arch. Ep. Com. & Bar. Abbates & Priores, & de quolibet Comitatu quatuor Milites & de qualibet civitate quatuor, qui omnes in preſentia Dom. Will. ſcil. Arch. Ebor. Rob. de mortuo Mari & R. Burnet Cler. qui in loco Domini Regis Anglorum Edwardi præfuerunt, Sacramentum eidem Domino Ed. tanquam terræ Principi ſuſceperunt, ubi Dominus W. de Mertone Cancellarius conſtitutus eſt, & ut moram trahat apud Weſtm. tanquam in loco publico uſque ad adventum Principis. Et ibi proviſum eſt, quod nulli ſint Juſticiarii itinerantes uſque ad adventum Principis ſed in Banco. Annales Waverleienſis, f. 227.

Dominica prima Quadrageſimæ 4 Id. Martii conſecratus fuit frater R. de Kilderlii in Arch. Cant. Item conceſſa eſt decima Eccleſiarum & Religioſorum Domuum Domino Ed. & ejus Germano ad ſupplicationem Domini Papæ ut ſit pro duobus Annis. F. 228.

'In this year, to wit, after the Feaſt of St. *Hillary*, all the Prelates 'and other great Men of the Kingdom *being call'd together* at *Weſt-* 'minſter, after the Death of the Illuſtrious King *Henry*, there met the 'Archbiſhops, Biſhops, Earls, and Barons, Abbots and Priors, and Four 'Knights from every County, and Four from every City, which all 'in the preſence of *William Archbiſhop of York*, *Robert Mortimer*, and 'R. Burnet Clerk, who preſided in the ſtead of *Edward* their Lord, and 'King of England, took an Oath to the ſaid *Lord Edward*, as Gover- 'nor of the Realm. Where the Lord *William of Merton* is conſtituted 'Chancellor, and that he ſhould abide at *Weſtminſter* as in a publick 'place, till the Prince's coming. And there it was provided that 'there ſhould be *no Juſtices itinerant* before the Prince his coming, 'but only in the *Bench*. The firſt week of the *Quadrageſima*, to wit, 'on the Fourth of the Ides of *March*, Father *R.* of *Kilderly* is conſe- 'crated Archbiſhop of *Canterbury*.

Matthew Weſtminſter of the ſame time ſays, *Rege igitur Supulto ſicut mos eſt regibus ſepeliri, Gilbertus & Johannes Comites Gloverniæ & Warenniæ, nec non Clerus & Populus, ad magnum Altare Eccleſiæ Weſtm' celeriter properarunt Ed. primogenito Regis fidelitatem jurantes, qui ſi viveret penitus ignorarunt; Agebat enim in partibus tranſmarinis contra Chriſti adverſarios bellaturus. Poſtmodum ad novum Templum Londini Nobiliores Regni pariter convenerunt. Et facto ſigillo novo conſtituerunt fideles miniſtros & Cuſtodes qui Theſaurum Regis & Pacem Regni fideliter cuſtodirent.* Mat. Weſt.

'The King therefore being buried in that ſtate in which Kings us'd 'to be buried, *Gilbert* and *John*, *Earls of Gloſter and Waren*, as alſo the

'Clergy

'Clergy and People, as ſoon as might be, haſtned to the great Altar of '*Weſtminſter*-Church, ſwearing Fealty to *Edward* the King's eldeſt 'Son, tho they were wholly ignorant whether he were alive or no; 'for he was in Foreign Parts, fighting againſt the Enemies of Chriſt. 'After this the Nobility of the Kingdom likewiſe met; and a new 'Seal being made, they conſtituted faithful Miniſters and *Keepers*, 'who might faithfully keep the King's Treaſure, and the Peace of 'the Kingdom.

The *Annals* and *Matthew Weſtminſter* differ in circumſtances, tho they agree in ſubſtance; but it would ſeem as if the ſame *Convention* had been adjourn'd from *Weſtminſter* to the *Temple*, and therefore its Acts might have been ſaid to have been at either of the places.

It at leaſt appears from *Matthew Weſtminſter*, that prior to that *Solemn Convention* which the *Annals* mention, there had been a great confluence of people headed by the *Earls* of *Gloceſter* and *Waren*; at that meeting 'tis probable that the three perſons nam'd in the Annals were choſen to hold the *Convention* as Vicegerents to the King. This when it met, provided not only for ſwearing Allegiance to the King, but for the adminiſtration of Juſtice, choſe the great Officers of the Kingdom, made a new Great Seal, and if occaſion had been, might have raiſed a Tax over the whole Kingdom, as well as they did of the *Clergy*, or permitted their Repreſentatives to raiſe of the reſt.

This Convention was not ſo full and ſolemn a Repreſentative of the People as ours was, and yet it being a Repreſentation which the People conſented to at that time, was then look'd on as ſufficient to conclude the whole, and is a Preſident in Point, ſhewing that there was no neceſſity, in ſuch circumſtances, to uſe the ſame form of Proceedings as when they had a King before whom they were ſummoned. But as the men of Form are too ſtrict, others are too looſe in their notions, and ſuppoſe the Conſequence of a *Diſſolution* of this *Contract* to be a mere *Commonwealth*, or abſolute *Anarchy*, wherein every body has an equal ſhare in the Government, not only Landed-men, and others with whom the Ballance of the Power has reſted by the Conſtitution, but Copy-holders, Servants, and the very *Fæces Romuli*, which would not only make a quiet Election impracticable, but bring in a deplorable Confuſion. But this *Dilemma* they think not to be anſwer'd:

Object. Either the old Form, as under a Monarch, remains, or it does not: If it does, the late Action of the *Lords* and *Commons* was irregular: If it does not, all the People are reſtored to their Original Rights; and all the Laws which fetter'd them, are gone.

Anſw. Here we muſt diſtinguiſh upon the word *Form*; for if it be taken of the Form of Proceedings or Adminiſtration, 'tis no conſequence that the Form of Government or Conſtitution ſhould fail, becauſe we admit that the other does.

Mr. *Hobbs* indeed holds, 'That when a Monarch for himſelf and 'his Children has left a Kingdom, or renounces it, the Subjects return 'to their abſolute and natural Liberty.

Pufendorf de interregnis p. 282: Whom the Learned *Pufendorf* thus anſwers.

'They who have once come together into a Civil Society, and

'ſub-

'ſubjected themſelves to a King, ſince they have made that the Seat 'of their Fortunes, cannot be preſumed to have been ſo ſlothful as to 'be willing to have their *new Civil Society* extinct upon the Death of 'a King, and to return to their *Natural State* and *Anarchy*, to the ha-'zarding the Safety now ſetled. Wherefore when the Power has not 'been *conferr'd* on a King by *Right of Inheritance*, or that he may 'diſpoſe of the Succeſſion at his pleaſure, it is to be underſtood to be, 'at *leaſt tacitely, agreed* amongſt them, That preſently upon the Death 'of a King, they ſhall meet together, and that in the place where 'the King fix'd his Dwelling. Nor can there well be wanting among 'any people, ſome Perſons of Eminence, who for a while may keep 'the others in order, and cauſe them as ſoon as may be, to conſult 'the Publick Good.

The Author of the beſt Treatiſes of Civil Polity which I have met with in the *Engliſh* Tongue, who after the Confutation of Sir *Robert Filmer*'s abſurd Notions of Government, eſtabliſhes it upon the only true Foundation, the Choice of the People, that *Original and Supreme Act of the Society, antecedent to all Poſitive Laws in it*; ſeems not to have attended to the duplicity, or other particular nature of the Contract, in relation to the *Engliſh* Government.

Two Treatiſes of Government: In the former, the falſe Principles and Foundation of Sir Robert Filmer *and his Followers are detected and overthrown. The latter is an Eſſay concerning the true Original, Extent, and End, of Civil Government, Ed.* Anno 1690.

P. 379

When, ſays he, treating of the Diſſolution of Government, *he who has the Supreme executive Power, neglects and abandons that charge, ſo that the Laws already made, can no longer be put in execution: This is demonſtratively to reduce all to Anarchy, and ſo effectually to diſſolve the Government; for Laws not being made for themſelves, but to be by their execution the bonds of the Society, to keep every part of the Body-Politick in its due place and function, when that totally ceaſes, the Government viſibly ceaſes, and the people become a confuſed multitude, without Order or Connexion: Where there is no longer the Adminiſtration of Juſtice for the ſecuring of mens Rights, nor any remaining Power within the Community to direct the form, or provide for the neceſſities of the Publick, there certainly is no Government left.*

Vid. Ca. 19. *of the Diſſolution of Government.*

But in whatever Community there is a Power remaining to provide for the neceſſities of the Publick, upon the determination of the Intereſt of any ſingle Perſon, who had the *Supreme Executive Power*, without recourſe to the *confus'd Multitude*; there 'tis evident the Government may ſtill continue: and by conſequence, ſuch a Government is more perfect, being leſs ſubject to diſſolution, than that which upon the loſs of its Supreme Governour has all its Bonds and Ligaments diſſolv'd.

However, this his Scheme of Government is not erected as the moſt perfect, but ſeems deſignedly adapted to what he takes our Government to be, tho not expreſly named; in which he ſuppoſes *a ſingle hereditary Perſon, having the conſtant Supreme Executive Power, from whom all Inferior Magiſtrates derive all their ſeveral ſubordinate Powers, or at leaſt the greateſt part of them.*

P. 435. 371.

Whereby it is plain, that all Monarchies in any meaſure Elective, and not only Co-ordinate Powers, but all Officers who derive their Powers from the immediate Choice of the People, or the Conſtitution, are beſides his ſtate of the Queſtion.

Vid. Cap. 3. *of the ſtate of war*

And whereas he argues, That the people are by the Monarch's Violations of the Conſtitution, reſtor'd to the *ſtate of nature*, there being no common Judg in that *ſtate of War* to which his injuries force them; no man who obſerves how clearly and conſiſtently he always reaſons, can believe that he would apply this to ſuch a ſtate of the Queſtion, as I have ſhewn that our Conſtitution warrants; which depends not upon a ſingle Contract between the People, and a Prince and his Heirs, whom they had ſet over them, whoſe Authority ceaſing, they were to new mold the Government, or ſet up the like, as they thought fit.

But there plainly was a farther Contract among themſelves, to prevent *Anarchy* and Confuſion, at any time when the *Throne* might be *vacant*; and by vertue of this *Contract* they have regularly made thoſe Elections, which are frequent in our Hiſtories, and are authentick Preſidents for our late Proceedings.

Yet, ſince this Judicious Author's bringing the Government back to its firſt Principles ſooner than our Conſtitution allows, does not proceed from want of reaſoning rightly, in which I cannot ſay that he ever fails; I hope it will not be thought that I in the leaſt derogate from the Honour due to him, when I obſerve matter of fact not falling within his notice.

The Author of a late Paper in relation to theſe Times, has this paſſage, not to be neglected:

A Letter to a Friend, adviſing in this extraordinary Juncture

'All Power is originally or fundamentally in the People, formally 'in the Parliament, which is one Corporation made up of three Con'ſtituent eſſentiating Parts, King, Lords, and Commons; ſo it was 'with us in *England*. When this Corporation is broken, when any one eſſentiating Part is loſt or gone, there is a Diſſolution of the Corporati'on, the formal Seat of Power; and that Power devolves on the 'People. When it is impoſſible to have a Parliament, the Power re'turns to them with whom it was originally. Is it poſſible to have a 'Parliament? It is not poſſible; the Government therefore is Diſſolv'd.

Hence he would argue a neceſſity of having a larger Repreſentative of the People, that the Convention may be truly National. But had this Ingenious Perſon obſerved *Pufendorf*'s two diſtinct Contracts, by the firſt of which a Proviſion was made for a Monarchy, before any particular Perſon was ſetled in the Throne; he would have found no ſuch neceſſity. But if immemorially the People of *England* have been Repreſented as they were for this Aſſembly, and no needful form or circumſtance has been wanting to make the Repreſentation compleat; all men who impartially weigh the former Proofs of Elections, not without a Rightful Power, muſt needs think the laſt duly made.

Vid. Pufend. de Interregnis p. 267. ſup. in Marg.

Dr. *Brady* indeed, with ſome few that led him the Dance, and others that follow, will have the preſent Repreſentation of the Commons of *England* to have been occaſioned by Rebellion, 49 *H.* 3. But I muſt do him the honour to own him to be the firſt, who would make the Barons to have no Perſonal Right, but what depends upon a King in being; for he allows none to have Right of coming to Parliament, but ſuch only *to whom the King has thought fit to direct Writs of Summons*: Yet, I dare ſay, no man of ſenſe, who has read that Controverſie, believes him. But were his Aſſertions true, it might be granted, that the *Barons* would have no more perſonal Right, to be of any Convention upon the total Abſence

Brady's *firſt Ed. p.* 227. *See this prov'd upon him in the Pref. to* Jus Anglorum ab antiquo

Abſence or Abdication of a King, than they would have of coming to Parliament without His Writ. Yet ſince the Right of the People in perſon or Repreſentation, is indubitable in ſuch a Caſe, what hinders the validity of the late Choice, conſidering how many Elections of Kings we have had, and that never by the people diffuſively, ſince the firſt Inſtitution of the Government? And the Repreſentations agreed on, (tho I take them to be earlier ſetled for Cities and Burroughs, than for the Freeholders in the Counties) have ever ſince their reſpective ſettlements, been in the ſame manner as now: at leaſt, none have ſince the firſt Inſtitution ever come in their own perſons, or been Electors, but what are now preſent perſonally or repreſentatively; and their own Conſent takes away all pretence of Error.

If it be ſaid, That they ought to have been Summoned *Forty days* before the Aſſembly held: That is only a Privilege from the King, which they may wave; and have more than once conſented to be Repreſented upon leſs than *Forty days* Summons. Mr. *Prynne* gives ſeveral Inſtances, as 49 *H.* 3. 4 *E.* 3. 1 *H.* 4. 28 *Eliz.* and, ſays, he *omits other Precedents of Parliaments Summoned within Fourty days after the Writs of Summons bear date, upon extraordinary Occaſions of publick ſafety and concernment, which could not conveniently admit ſo long delay.* And Sir *Robert Cotton*, being a ſtrict Adherer to Form, upon an Emergency adviſed, That the Writs ſhould be Antedated: which Trick could make no real difference. To ſay, however, there ought to have been a Summons from, or in the name of a *King* in being, is abſurd; it being for the exerciſe of a lawful power, which, unleſs my Authorities fail, the people had without a *King*, or even againſt the conſent of one in being.

Prynne's *Animadverſions on* 4 *Inſt.* f. 10.

Vid. *Ruſhw.* 1 Vol. f. 470. 3 Car. 1.

Beſides, it appears, That ſuch Summons have not been eſſential to the *Great Councils* of the Nation. *Tacitus* ſhews, That the *Germans*, from whom we deſcend, had theirs at certain days, unleſs when ſome extraordinary matter happened.

Tacit. de Moribus German. Coeunt, niſi quid fortuitum & ſubitum, certis diebus, &c. V. Leges S. Ed. tit. Greve. In Capite Kal. Maij. Jus. Angl. c. 7. Vid. Append.

And by the *Confeſſor's* Laws, received by *W.* 1. and continued downwards by the Coronaton Oaths requir'd to this very day, the General *Folcmot* ought to be held annually, without any formal Summons, upon *May-day*.

By the time of *E.* 1. this cuſtom to hold a Parliament upon *May-day* received a little alteration; for the Pope having at the beginning of that King's Reign, demanded eight years Arrears of an Annual payment, which he claim'd for the Kingdom of *England*; the King had put him off till the next Parliament, which, he ſaid, had us'd to be held in *England* about the *Octaves of our Saviour's Reſurrection.* This Parliament was held at the *Octaves* accordingly, as the King acknowleges, upon the Pope's ſecond demand; but pleads that it had been taken up with the great Affairs of the Nation, till his want of Health occaſion'd a Diſſolution, before they could conſider of the Matter, which he promis'd ſhould be brought before them at the *next Parliament*, which he purpoſed to hold at *Michaelmas* then following.

The Statute 16 *Car.* 1. which our rigid Formaliſts muſt own to be in Force, has wholly taken away the neceſſity of Writs of Summons from a King.

The

Stat. 12. Car. 2. c. 1. The Aſſembly of the Lords and Commons held *Anno* 1660. was ſummoned by the Keepers of the Liberties of *England*, not by the Kings Writs; yet when they came to Act in conjunction with the King, they *declare*, *enact*, and *adjudge* (where the Statute is manifeſtly declaratory of what was Law before) *That the Lords and Commons then ſitting, are, and ſhall be the Two Houſes of Parliament, notwithſtanding any want of the King's Writ or Writs of Summons, or any defect or alteration of, or in any Writ of Summons*, &c.

Tho' this ſeems parallel to the preſent Caſe, yet in truth ours is the ſtrongeſt: For the King then had been only King *de jure*, no Authority could be received from Him, nor could any Act of His be regarded in Law, through defect either of Juriſdiction, or Proof, if not both: Accordingly, as not only the Reaſon of the thing, but the Lord *Coke* ſhews, a Pardon from one barely King *de jure*, is of no force. Beſides, the *Keepers* were an upſtart Power, impoſing themſelves upon the People, without any formal conſent; at leaſt not ſo fully received to the publick Adminiſtration, as our preſent King was, who, at the requeſt of a very large Repreſentative of the People, purſued the late Method of Calling a more ſolemn Aſſembly. If that *Anno* 1660. had Power, acting with the King, to declare it ſelf a Parliament; Why had not this, in defect of a King, to declare or chuſe one?

3 Inſt. f. 7. Sup. in Marg.

Sure I am, prudent Antiquity regarded not ſo much the Perſon calling, or the End for which a *General Council* was call'd, as who were preſent; That Notice which they complied with, being always ſufficiently formal.

Anno 1127. Vid. Spelm. Con. 2 Vol. f. 1. De modo habendi Synodos in Angliâ primævis temporibus. Vid. Jan. Ang. fac. nov. and Jus. Ang. Flor. Wigorn. f. 663. Confluxerant quoque illuc magnæ multitudines Clericorum, Laicorum, tam divitum quam mediocrium, & factus eſt Conventus grandis & ineſtimabilis. Quædam determinata, quædam dilata, quædam propter nimium æſtuantis turbæ tumultum ab audientiâ judicantium profligata, &c. Rex igitur cum inter hæc Londoniæ moraretur, auditis Concilii geſtis conſenſum præbuit, & confirmavit Statuta Concilii a Willielmo Cant. &c. celebrati.

Wherefore a *General Eccleſiaſtical Council* being Summoned in the Reign of *H.* 1. by *William* Archbiſhop of *Canterbury*, thither, according to the known Laws of thoſe times, the Laity came: I cannot ſay they ſate there; for the Numbers were ſo great, as they commonly were at ſuch Aſſemblies, before the Freeholders agreed to Repreſentations, That happy was the Man, whatever his Quality, that could have a convenient ſtanding.

After the Eccleſiaſtical Matters were over in the Council I now ſpeak of, they fell upon Secular: Some they determined, ſome they adjourned; ſome, the Judges of the Pole or Voices could make nothing of, by reaſon of the great Crowd and Din: And when the King heard their Determinations, and confirm'd them, they had full Legal Force.

The conſideration of the time and circumſtances of the Coronation of *H.* 1. and the Force which the things then agreed on were reputed to have at that time, and ſome of them ever ſince, till alter'd by ſubſequent Laws, may abundantly prove, that there is no need of ſtrict form, for the doing what is agreable to the ſenſe of a Nation, tho not formally expreſs'd at the time.

H. 1. did not ſtand next in the Line, his eldeſt Brother *Robert*, who was ſet aſide for *W.* 2., was then alive. Nor was it poſſible for all

all people of legal intereſts to have been conven'd at that time, Collectively, or by a regular Repreſentation; it being within four days after the Death of his Brother *W*; yet hear what *Malmsbury* ſays upon that occaſion:

Occiſo Rege Willielmo in Regem electus eſt. Itaque edicto ſtatim per Angliam miſſo injuſtitias a fratre Ranulpho inſtitutas prohibuit, penſionum, & vinculorum gratiam fecit, effeminatas Curiâ propellens lucernarum uſum noctibus in Curiâ reſtituit, qui fuerat tempore fratris intermiſſus. *Aliquarum moderationem Legum revocavit in ſolitum, Sacramento ſuo & omnium procerum ne luderentur corroborans. Lætus ergo dies viſus eſt revireſcere populis, cum poſt tot anxietatum nubila Serenarum promiſſionum infulgebant lumina: Et nequid profecto gaudio accumulato abeſſet, Ranulpho nequitiarum fæce tenebris ergaſtularibus incluſo, Anſelmum pernicibus nunciis directum. Quapropter certatim plauſu Plebeio concrepante in Regem Coronatus Londoniæ, nonis Auguſti quarto poſt obitum fratris die. Hæc eo ſtudioſius celebrebantur, ne mentes procerum electionis quaſſarentur pœnitudine, quod ferebatur rumor Robertum Comitem ex Apuliâ adventantem jamjamque affore.* Malmſ. f. 88. de H. 1.

'King *William* being ſlain, He was choſen King; whereupon, by 'Proclamation preſently ſent throughout *England*, He forbad the In'juſtices ſet up by Father *Ranulph*, he remitted Debts and Impriſon'ments, driving effeminate perſons from the Court; He reſtor'd the 'uſe of Candles by Night in the Court, which had been intermitted 'in the time of his Brother; He moderated ſome Laws according to 'former uſage, corroborating them by His own Oath, and the Oaths 'of all His Peers, that they might not be eluded upon any account. 'A joyful day to the people ſeem'd again to flouriſh, ſince the 'Lights of Serene Promiſes ſhone upon them after ſo many Anxieties. 'And that, in truth, nothing might be wanting to their accumulated 'Joy, *Ranulph*, the Dregs of Villanies, being ſent to Priſon, Meſſen'gers were immediately ſent for *Anſelm*: Wherefore He was Crown'd 'King at *London* on the Nones of *Auguſt*, the fourth day after His 'Brother's Death, with the eager acclamations of throngs of the 'Common people. Theſe things were celebrated with the greater 'earneſtneſs, leaſt the minds of the Great Men ſhould be ſhaken with 'repenting of their choice; becauſe there was a Rumour that Earl '*Robert* was coming out of *Normandy*, and that he would be here im'mediately.

Hereby it appears, that the *Honeſt Mob* urg'd on and ſecur'd this *Election*, which otherwiſe ſome of the formal Nobility would have diſputed at the beginning, or ſoon have repented of, upon expectation of making ſome particular terms for themſelves, not regarding the *Publick Good*, for which *H.* 1. had ſo largely provided.

To ſet the proceedings of that time in a true light, it may be requiſite to tranſcribe part of what *Matthew Paris* took from the Hiſtorians of the time, and particularly from *Sigebert*:

Defuncto itaque Rege Willielmo, cum Magnates Angliæ ignorarent quid actum eſſet de Roberto Duce Normanorum, Regis defuncti fratre primogenito, qui jam per quinquenneum in expeditione Hieroſolymitanâ moram pertraxerat, timuerunt diu ſine regimine vacillare. Quod fratrum ultimus & juvenis ſapientiſſimus, cum callidè cognoviſſet, congregato Londoniis Clero Angliæ & populo univerſo, promiſit, emendationem legum quibus Mat. Par. 81. Sigisbertus Gemblacenſis Monachus huc uſque cronica ſua ſatis eleganter digeſſit. Mat. Par. f. 74.

bus oppreſſa fuerat Anglia tempore patris ſui, & fratris nuper defuncti, ut animos omnium in ſui promotionem accenderet & amorem, & ut illum in Regem ſuſciperent & patronum. Ad hæc Clero reſpondente, & Magnatibus cunctis; quod ſi animo volente ipſis vellet concedere, & chartâ ſuâ communire illas libertates & conſuetudines antiquas, quæ floruerunt in regno tempore SANCTI REGIS EDWARDI, in ipſum conſentirent & in Regem unanimiter conſecrarent. Henrico autem hoc libenter annuente, & ſe id facturum cum juramento affirmante, conſecratus eſt in Regem apud Weſtmonaſterium, favente Clero & populo, cui continuo a Mauritio Londinenſi Epiſcopo & a Thomâ Eboracenſi Archiepiſcopo Corona capiti imponitur. Cum fuerat diademate inſignitus has libertates ſubſcriptas in Regno, ad exaltationem Sanctæ Eccleſiæ, & pacem populi tenendam conceſſit, &c.

So R. 1. was call'd but Duke of Normandy, till he was choſen King of England.

'King *William* being dead, the Great Men of *England*, not knowing what was become of *Robert* Duke of *Normandy*, the deceaſed King's Elder Brother, who had been five years at the Holy-war, *were fearful of wavering long without a Government.* Which when *Henry* the youngeſt Brother, a very wiſe young Man, cunningly obſerv'd, the *Clergy of England*, and all the people being aſſembled, He promiſed an amendment of thoſe Laws with which *England* had been oppreſſed in the time of his Father, and his Brother newly deceas'd; that he might ſtir up the minds of all to his promotion and Love, and that they might receive him for *King* and *Patron.*

'To theſe things the Clergy anſwering, and then the Great Men, That if with *a willing mind he would Grant, and Confirm with His Charter thoſe Liberties and ancient Cuſtoms, which flouriſh'd in the Kingdom in the time of Holy King* Edward, they would conſent to have him, and *would unanimouſly conſecrate him King*; And *Henry* freely conſenting to this, and affirming with an Oath that he would perform, He was Conſecrated King on our *Lady day, by the Conſent of Clergy and People*, upon whoſe Head the Crown was immediately ſet by *Maurice Biſhop of London, and Thomas Archbiſhop of York.* As ſoon as he was Crown'd He granted the under-written liberties, for the exaltation of Holy-Church, and preſerving the Peace of the Kingdom.

Then follows his Charter, containing ſome Alterations of the Law, which had before obtained, not only in relation to the Rights of the Crown, but of the Subjects, particularly whereas the Relief had been, as Fines now in moſt Copy-hold Mannors, at the Will of the Lords, they were reduced to what was juſt and lawful, according to St. *Edward's* Laws; for which, as ſhould ſeem by the Charters of King *John*, and *H.* 3. declaratory of the Common-Law, there were known Rates, and *H.* 1. reſtored all the Common-Law, with the Statutes made for the amendment of it, in the time of *W.* 1.

Cart. H. 1. Siquis Baronum meorum Comitum vel aliorum qui de me tenent, mortuus fuerit.

He ſeem'd in two particulars wiſely to have ingratiated himſelf with the people; the firſt was in gaining to his ſide the *Directers of their Conſciences*, by a conceſſion to the benefit of Church-men, which was wholly new; and that was, That an *Archbiſhop or Biſhop, or* Abbat being *dead, he would take nothing of the demean of the Church, nor of its tenents, until the Succeſſor was inducted*; which was a departure from that Prerogative which belonged to the Crown upon the

Vid. Cart. *H.* 1.

Va-

Vacancies, as appears by the affirmation of *H.* 2. the Charter of King *John*, and the Statute of the King's Prerogative, 17 *E.* 2. Vid. Anti Brit. inf. f. 135. Carta Johannis. Hæc omnia obſerventur de cuſtodiis Arch. Epiſcopatuum Abbat. Prior, Eccleſ., & Dignitat. vacantium, quæ ad nos pertinent, &c. Prerog. Regis, 17 E. 2. c. 14.

This Indulgence to the Church, without ſpecial Proviſion for keeping it up, was withdrawn by the next general Confirmation of the Confeſſor's Laws, and therefore 'tis no wonder that it is left out of ſubſequent Charters.

If he was not popular in this, at leaſt he was in another Action, which was his impriſoning *Ranulph*, who had been the great Inſtrument of oppreſſion in the former Reign, and that it was with intention of puniſhing him ſeverely, appears by *Ranulph*'s making his eſcape out of Priſon, by means of thoſe great Treaſures which he had heaped up from the Spoils of the People. Mat Par. f. 76.

Ranulph no doubt, could at a much cheaper rate, have applied himſelf to ſuch a Lawyer, as the Author of the Magiſtracy vindicated, if ſuch an one could have been found in that Age of leſs corruption, who might have adviſed him to reſt ſatisfied, that it would not be conſiſtent with the Wiſdom and Juſtice of a Prince, who came in upon a *Vacancy* of the Throne (as *H.* 1. did, not ſtanding next in the Line) to puniſh any Criminals of the foregoing Reign; but *Ranulph* was wiſer in running away, and perhaps more modeſt, than to think that for his *uſeful parts* employed in the pillaging and deſtroying innocent men, he might pretend to merit under the Succeſſor. *H.* 1. having truly ſhewn a Fatherly care of the people, no man then raiſed any fooliſh ſcruple upon the manner of the Proceedings, where the Subſtance was pleaſing to all. Vid. *the laſt part of the Magiſtracy and Government vindicated*, p. 8. I'll not mention the Argument from the Vacancy, that the Government was diſſolved, every thing reduced into its Primitive State of nature, all Power devolved into Individuals, and the particulars only to provide for themſelves by a new Contract; for if ſo, there's no new conſent for puniſhment of Acts done before the diſſolution, and conſequently revenge for that, is at an end. *Vid. ib. p.* 2.

But that which has been done by them who could get together upon the intervals of Government, has been held valid, that the *Vacancies* might be as ſhort as poſſible, unleſs the general ſenſe of the people has immediately appear'd againſt it; and thus *Harold* having been Crown'd by ſurprize, when the Friends of *W.* 1. were at the *Confeſſors* Buryal; ſome Authors upon that very Account, will have it that *Harold* was an Uſurper. Vid. 2. part.

But that it may be ſeen how little apt people are to diſpute Forms, when a King acts agreeably to the ſenſe of a Nation, I ſhall ſhew that *H.* 1. acted as King, even before he was Crown'd, immediately upon his Election, for which *Huntindon* is my Author, who having mentioned the death of *W.* 2. ſays,

Henricus frater ejus junior ibidem in Regem electus, dedit epiſcopatum Winceſtriæ W. Giffard, pergenſque Londoniam, ſacratus eſt ibi a Mauritio Londonenſi Epiſcopo. Hen. Huntin. f. 216. b. de H. 1.

'His younger Brother *Henry* being there choſen King, gave the Biſhoprick of *Wincheſter* to *W. Giffard*, and going on to *London*, was 'conſecrated there by *Maurice* Biſhop of *London*.

And

And I am much miſtaken, if what he did in relation to another Biſhop, *Anſelm*, who had been Archbiſhop of *Canterbury* in the time of *W.* 2. is not an additional evidence to what I have already produced, that the Convention in which he was Crown'd, was turn'd into a *Parliament*, or acted as one.

Ordericus Vitalis, *ſays* Anſelmus, enim Dorobornenſis Archiep. exulabat. Eadmerus f. 38, 39, 40. *ſhews this was at a Council at* Winchester, ubi, *ſays he*, ex condicto venimus. Mat. Par. f. 25. Trajacere quidem liberum eſſe ſed inconſulte id facturum ſiquidem nullam revertendi ſpem in poſterum ei futuram. *Eadmerus.*

Anſelm, as appears by the circumſtances of the ſtory, had been condemned to perpetual Baniſhment by Parliament, in the time of *W.* 2. for he reſolving to go take the *Pall* at *Rome*, 'twas declared to him in Parliament, that if he went, it *ſhould be without any hopes of returning again.*

Upon this the See of *Canterbury* became vacant, agreeably to what afterwards hapned in the caſe of *Becket*; tho he was not baniſh'd, but fled away voluntarily, yet the *French King* having preſs'd *H.* 2. to let *Becker* have the Profits of the Archbiſhopriek, the King told him,

Antiquitates Britan. f. 135. *Reſtituere ſe nihil ei poſſe, qui ſponte Eccleſiam deſeruerit, itaque cum e Regni conſuetudine Regiſque dignitate, Cantuarienſis Eccleſiæ quam Thomas fugâ voluntariâ pro derelicta fecit, fructus vacantes certis jam perſonis contuliſſet, nolle ſe dixit, ea quæ prout jure Regni potuit contuliſſet, in irritum, dubiumve revocari.*

'That he cannot reſtore any thing to him, who left his Church of 'his own accord; ſince therefore, according to the cuſtom of the 'Kingdom, and the Royal Dignity, he had conferr'd upon certain per-'ſons the *vacant Fruits*, of the Church of *Canterbury*, which *Thomas* 'by his voluntary Flight had made *derelict*, he ſaid he would not make 'void, or call in doubt thoſe things which he had granted, according 'to the Law of the Kingdom.

If there might be any doubt of a *Vacancy* of the See in *Becket*'s caſe, at leaſt there was none in *Anſelm*'s, who had in the time of *W.* 2. been baniſh'd by Parliament, never to return; and yet the *Convention* 1 *H.* 1. being become a Parliament, not only recall'd him from baniſhment, in which they ſet aſide an Act of a former Parliament, but they call'd him to fill the See of *Canterbury*, after it had been vacant; which was equally a Parliamentary Act in thoſe days; as appears by the choice of *Lanfranc* in the time of *W.* 1.; of this very *Anſelm* in *W.* the 2*d*'s; and of *Becket* in the Reign of *H.* 2.

Concerning the Election of *Lanfranc*, Arcbiſhop *Parker* tells us,

Ibid. f. 110. *Celeberrima eſt autem hujus præ cæteris electio, & conſecratio. Electus enim eſt a majoribus Cantuarienſis eccleſiæ, tum acceſſit Procerum, atque Præſulum, totiuſque populi quaſi Populi conſenſus, in Aula Regis, quod ſane eſt, ad inſtar Senatus ſeu Parliamenti Anglicani.*

'But this Election and Conſecration was with more Solemnity than 'any other. For he was choſen by the Chief of the Church of *Canter-'bury*. To which was added, the conſent of the Peers and Prelates, 'and as it were, *of the whole People* in the King's Court, which in 'truth is of the nature of an *Engliſh* Senate or Parliament.

Tho he will have this Election to have been more ſolemn than any other,

other; and that it was not in a real Parliament, but in an Aſſembly of the ſame nature; yet what himſelf ſays of the Elections of *Anſelm* and *Becket*, explain'd by more Ancient Authors, ſhews that the Elections of other Archbiſhops us'd to be as ſolemn; and that both that of *Lanfranc*, and of the others, were in a full Parliament; or *Great Council* of the Nation.

Himſelf ſays, That both Peers and People were ſo much for *Anſelm*'s being made Archbiſhop, that *W.* 2. *would not openly contradict*. *Eadmerus*, who was always by *Anſelm*'s ſide, ſhews, that *W.* 2. being taken ill, in the ſeventh year of His Reign, *Omnes totius Regni Principes coeunt, Epiſcopi, Abbates, & quique Nobiles.* There gathered together all the *Princes of the* Kingdom, the Biſhops, Abbots, and *all the Nobles.* This, as appears, was, upon notice given among themſelves, to provide for their Common ſafety. To that Aſſembly the King makes ſolemn promiſes of Governing better than he had done: And *Anſelm* being there named for Archbiſhop, *Concordi voce ſequitur acclamatio omnium*, 'The acclamation of all followed, as with 'one voice. And *Eadmerus* ſays, that he was made Archbiſhop, *Secundum totius Regni Electionem*, 'according to the Election of the whole 'Kingdom.

Antiq. Brit. f. 116. W. 2. *Proffered* Anſelm *the Archbiſhoprick, but underhand diſſwaded him from it*, Sed cum neque hâc ſuaſione quicquam profeciſſet, proque certo comperiſſet Proceres, Populumque Angliæ adverſos, aut minus fidos ſibi, Anſelmo favere, eumque ad Archiep. munus jam oblatum flagitare, apertè contradicere noluit.

And another Monk of the time ſays, the King made him Archbiſhop:

Conſilio & Rogatu Principum, Cleri quoque & populi petitione & electione.

By the Counſel and Advice of the Peers, and the Petition and Election of the Clergy and People.

Gondulfus Roff. Ep. Monac. Bec. inter Anſelmi Epiſt. lib. 3.

Archbiſhop *Parker*, ſpeaking of the Conſecration of *Becket*, in the 7th of *H.* 2. ſays,

Conſecrationi huic tam illuſtri interfuit, H. Rs filius, cum pleriſque Regni Proceribus, & quatuordecim Cantuarienſis Provinciæ Epiſcopis, innumeràque Plebis multitudine, atque copiâ.

An. Dom. 1162. 7 H. 2. Antiq. Brit. f. 130.

'There were preſent at this Conſecration *Henry* the King's Son, 'with moſt of the Nobility of the Kingdom, and Fourteen Biſhops 'of the Province of *Canterbury*, and an innumerable multitude and 'throng of the common people.

The former Preſidents ſhew, that they were conſenting as well as preſent; nor could the abſence of the Biſhops of the other Dioceſſes make their Meeting the leſs a Parliament.

Sir *Henry Spelman* cites an Authority, proving that the Clergy were not conven'd at the Council of *Rochingham*, 9 *W.* 2. which muſt be meant of not being Summoned; for it appears by *Eadmerus*, that *Anſelm* and other Biſhops were there.

Spelman. Concil. vol. 2. f. 16. In quo fermè totius Regni Nobilitas præter Epiſcopos & Clerum Convenitur.

And Biſhop *Jewel* obſerves, that in the time of *E.* 1. a Parliament was held, from which the Clergy was excluded.

Jewel contra *Hard.* f. 455.

From theſe Authorities it appears, That as *Anſelm* was choſen Archbiſhop in one Parliament, and Baniſhed in another; nay, tho he

had gone away voluntarily, his See became *derelict*; and admit the King might have pardon'd his Baniſhment, out of Parliament, he could not have reſtor'd him to the exerciſe of his Office, but in a Council which was reputed to have the Authority of a Parliament: and ſuch Authority, 'tis plain that they in that time thought that *Convention* to have had, in which *H.* 1. was Crown'd; and which after his Coronation acted as a Parliament.

Malmſ. f. 88. It appears by *Malmsbury*, that *Anſelm* was call'd back in the ſame Aſſembly wherein *Ranulph* was committed to Priſon; and *Matthew Paris*, who is not ſo preciſe as to the time of *Anſelm's* being ſent for, ſays *Ranulph*, was Impriſon'd *communi Concilio Gentis Anglorum*, 'In a 'Common-Council of the *Engliſh* Nation. And it appears by *Mat-*
Mat. Par. f. 78, 79. *thew Paris*, That *Anſelm* upon his return was look'd on, and acted as Archbiſhop. And if this is not ſufficient evidence that that *Convention* was reputed a *Parliament*, or one of the *General Councils* of the Kingdom; at leaſt the Charter which he then granted, as I before obſerved, makes full proof of it.

Vid. Sup. f. 172, & 178. 'Tis obvious that the *Convention* 1 *H.* 1. was far leſs ſolemn, and had much leſs ground to be look'd on as a *Parliament*, than ours; and yet it being for removing a *Vacancy*, and Setling the Government, when the Nation was threatned with an Invaſion from *Duke Robert*; they thought the neceſſity of time would ſufficiently excuſe the abſence of Form.

But had there been no Warrant from former times for the late manner of proceeding; the people of Legal Intereſts in the Government having been reſtor'd to their Original Right, Who can doubt, but they had an abſolute power over Forms?

That they were not call'd a *Parliament*, I hope will not be an Objection, ſince the Word is much leſs Ancient than ſuch Aſſemblies: Nay, I find it us'd in the 25th of *E.* 1. for a Meeting of the People
Vid. Append. without the King, to conſult for the Publick-Good, of which *Matthew* of *Weſtminſter* ſays, *Parliamentum ſuum ſtatuerunt.*

Vid. Sup. Cap. 1. Since the *Cives*, the Common Subject of the National Power, have made their determination in our Caſe, this, according to that Poſitive Law which I have ſhewn above, ought to quiet the Debate, and command a ſubmiſſion. And yet were there not Poſitive Law on their ſide, the equitable Reſervations before obſerved, might be ſufficient Warrant.

Nor is the Civil-Law wanting to enforce this Matter.

One *Barbarius*, a run-a-way Servant, not known to be ſo, got in favour with *Anthony* at the time of the *Triumvirate*, and by his means came to be *Prætor*; Upon this, a great Queſtion aroſe, Whether what he did, or was done before him during his *Prætorſhip*, were
Hottom. Illuſt. Queſt. 17. valid? *Ulpian* decides in the affirmative: and *Hottoman* upon that Queſtion ſays, 'The ſuffrages of the People have the force of a 'Law.

Gotofredus de Electione Magiſtratûs inhabilis per errorem factâ, *p.* 6. The Reaſons given for the Reſolution, as they are in *Gotofred*, who beſt reconciles the various Readings, will greatly ſtrengthen our Caſe.

He tells us, That tho the Queſtion there is only concerning a Servant, the Reaſon of it reaches to Emperors, and all Secular and Eccleſiaſtical Dignities. The Reaſons why *Ulpian* holds the Acts of ſuch good, are,

1. In

1. In regard of Common Utility, and the Inconvenience it would be to thoſe who had buſineſs before him, if it were otherwiſe.

2. From the Power of the People to give a Servant this Honour. *Gotofred* thinks, 'If this may be done with certain knowledg that he 'was a Servant, much more through miſtake; for if the People, who 'have the Supream Power, may with certain knowledg, for the ſake 'of the Publick-Good, not only deſign a Servant for *Prætor*, but in 'this Caſe, by a juſt Election, take a Servant away from his Maſter; How 'much more may it be done as in the Caſe propounded, not to make 'a Servant wholly a true *Prætor*, not to take him from his Maſter; 'but only by a commodious interpretation, to have what is done by 'him, or with him, ſuſtain'd; and that ſo long, the Error of the Peo-'ple, and Servitude of the Perſon choſen, ſhould not prejudice what 'is done?

Gotofred goes yet further, and ſays, of 'Magiſtrates and Judges con-'ſtituted by Tyrants, the manner of Judgments being kept, the 'things done according to form of Law, or Tranſacted according to 'their Wills, have been held good. And yet in this Caſe the defect 'ſeems greater, being the Power is collated by one *inhabil*, and ſo a 'ſubſtantial form is wanting: Wherefore in this Part there ſeems 'no difference between the inhability of the Elector, or the 'Elected.

Gotofred. Sup. p. 25.

Sponte tranſacta.

And if ever the Common Utility, or Publick Good, might warrant Actions out of the Common Courſe, certainly this could never have been pleaded more forcibly than in the Caſe of this Nation; which unleſs it had declared for King *WILLIAM* and Queen *MARY* (which they did in the moſt regular way that the Nature of the thing would bear) had in all likelyhood, by *Iriſh* and *French* Forces, by this time been reduc'd to the miſerable condition of the poor Proteſtants in *Ireland*, who are by no means beholden to the nice Obſervers of unneceſſary and impracticable Forms.

However ſuch Formalizers would do well to anſwer the *French* King's Advocate in the Caſe of King *John*, who ſhews a Vacancy of a Throne; and to whom in ſuch Caſe, the care of the Kingdom belongs. And they being the *Barones Regni*, I need not now ſtand to prove, that in the Language of that time, 'twould comprehend all ſuch as were Members of our late Aſſembly of Lords and Commons. For admit it were to be reſtrain'd to the Lords only, then at leaſt the Commons now, were but ſupernumerary: And ſince the Lords Voted by themſelves, and not in the ſame Houſe with the Commons, for the majority of united Votes to carry it; the Settlement Voted by the Lords, were enough to conclude the Nation.

But for the farther conviction of thoſe who ſtill urge, That to hold that there may be a Parliament, without being ſummoned by the King's Writ, would be of pernicious conſequence to the Conſtitution of the Legal Monarchy under King *WILLIAM* and Queen *MARY*; I ſhall refer them to a Paper which came out not long ſince, entituled, *The Preſent Convention a Parliament*, which I have tranſcrib'd at large into the *Appendix*. As that Paper gives an abſtract of what might be prov'd by *Authorities*; thoſe which I have produced, give confirmation to that Paper.

Vid. Append.

Here,

Part 1. *Object.* Here, I ought not to paſs by ſome Objections of the Author of *Elementa Politica*, in relation to the ſuppos'd want of due Form in proceeding to Judgment, or of Actions leading to it; which if they were unwarrantable, the Judgment muſt have been ſo too, being founded upon the belief, that there was juſt occaſion for thoſe Actions.

The Subſtance of his *Objections*, may be reduced to theſe Heads:

Elementa Pol. p. 5. *Since publiſhed with the Title of* Vindiciæ Juris Regii.

1. 'Part of the Legiſlative Power is in the King: Whence it follows, that the whole Body of the People is not the Supream Authority; nor conſequently can call their Prince to account, without his own conſent.

2. 'That Part of the Legiſlative Power which is lodg'd in the People, is not given at large to be exerted at their pleaſure; but depends upon ſtated Rules and Limitations, and can only be exerted by their Repreſentatives in Parliament. Nay, it is ſo precarious a Privilege, that without the King's leave they can never make uſe of it: For it is neither lawful for them to Convene themſelves, nor yet to ſit any longer than the King pleaſes. Which is in different words, but the ſame with Mr. *Hobbs* his poſition, *Where there is already erected a Soveraign Power*; by which he means a ſingle perſon in poſſeſſion of Power, *There can be no other Repreſentative of the ſame People, but only to certain particular ends limited by the Soveraign.* If this were meant of Power in the abſtract, no Man neeed diſpute the point with either of the Authors.

Leviathan, f. 97.

But to proceed with the *Elements:*

Elementa Pol. 3. 'The Liberties of the Subject were Acts of Grace from the Crown; and ſince they had no Right to demand them by Force, they muſt take them upon ſuch Conditions as they are offer'd: Nor is it to be ſuppos'd that Kings would forgo their Irreſiſtible Power, unleſs they had Sign'd it away in ſo many words.

4. 'The Militia is by Law lodg'd in the King: Moſt of the Nation is oblig'd to Declare againſt taking up Arms upon any pretence whatſoever, againſt Him, or any perſons Commiſſioned by Him: And the two Houſes themſelves ſwear Allegiance.

5. 'That Clauſe for Reſiſtance in King *John*'s Charter, contrary to this, is of no force now; and however is an Authority againſt the Depoſing Power; there being an expreſs Proviſo for ſaving the King's Perſon and Royalty, and His being obey'd as formerly, upon Redreſs of Grievances.

Anſw. Not to obſerve the inconſequence from a qualified Legiſlative, to a Judicial Power, in which the Dernier Reſort is with the Lords; nor the miſtake, as if that Meeting and Sitting of Parliament which the Law has provided for, within, and till a certain time, were wholly precarious: Nor the former Objection againſt the Militia-Acts, for want of a due Repeal of the *Triennial*, 16 *Car.* 1. which this Author calls but a Propoſal; nor yet that the Allegiance ſworn, muſt be according to the Conſtitution: For a full Anſwer to all, it will appear, even by his own confeſſion, That theſe Reſtrictions have no place, but while the Conſtitution is preſerv'd.

Viz. *Till all Petitions are Anſwer'd, and that is certain which is reduceably to a Certainty.* Vid. Sup.

Him-

Himſelf admits, That had the *Legiſlative Power* been *invaded*, and the *Conſtitution of Parliaments* diſſolv'd, it would have ſuperceded his Niceties. But denies both, becauſe, forſooth, the Judgments againſt Charters were begun in a *Proteſtant Reign*, and *applauded by the loyal part of the Nation*; And the *Diſpenſing Power* was affirm'd by the Judges; which is only a juſtifying Crimes by their Authors; of which too many may ſay,

——*Pudet hæc opprobria nobis*
Et dici potuiſſe, & non potuiſſe refelli.

Nor may it be impertinent here to obſerve *Tacitus* his Account of the ſteps by which *Julius Cæſar* advanced himſelf to an arbitrary Power: Leaving the Application to others.

'When he had wheedled the Soldiers with large Pay, the People 'with Freedom from Taxes, all with the ſweetneſs of Peace; he roſe 'by degrees to draw the Offices of the Senate, Magiſtrates, Laws, to 'himſelf without oppoſition: When the moſt fierce had faln in the 'Wars, or were driven from their Country, the reſt of the Nobility 'being, as any of them was the more forward for Servitude, rais'd to 'Wealth and Honour, and profited by the Change; choſe rather 'preſent Safety, than the former State, not to be retrieved without 'hazard. Nor did the Provinces decline the Yoke; the Government 'of the Senate and People becoming cheap, through great mens quar-'rels, and the Avarice of Magiſtrates; the Law being enervated, 'and its courſe interrupted by Force, Solicitations, and at laſt Bribery.

Tacit. ed. Plant. p. 1. and 2. Ubi militem donis, populum annonâ, cunctos dulcedine otii pellexit, munia Senatus, Magiſtratuum legum, in ſe trahere nullo adverſante, cum feraciſſimi per acies aut proſcriptione cecidiſſent, ceteri Nobilium quanto quis Servitio promptior opibus & honoribus extollerentur, ac novis ex rebus aucti tuta & preſentia quam vetera & periculoſa mallent. Neque Provinciæ illum Statum abnuebant, ſuſpecto Senatûs Populiq; imperio, ob certamina potentium, & avaritiam Magiſtratuum, invalido legum auxilio, quæ vis, ambitu poſtremo pecuniâ turbabuntur.

The Author of the *Elements* ſuppoſes, that if the *Government were ſubverted* by the late King, all Rights whatſoever are loſt, as well as his; which I have ſhewn, by no means to follow.

But particularly, as to the Reſiſting-Clauſe in King *John*'s Charter, which he obſerves to be turn'd into an Excommunication in *H.* 3*d*'s, 'tis to be conſider'd, That as a King could not be thought to *ſubvert the Conſtitution* upon the firſt Breach of ſome particular Articles there, that Clauſe was in this reſpect an Addition to the Conſtitution; but being only in the Affirmative, could not derogate from it.

Himſelf ſays, *If with reference to the preſent Caſe, the Government is actually ſubverted, then I grant the King's Authority is deſtroyed.* And if the Government as to the King's ſhare in it, is *ſubverted*, and his Authority deſtroyed, then there is no doubt but the People are freed from all thoſe Forms to which his Preſence or Conſent were otherwiſe needful. Elem Pol. *part printed.*

This Author yields in another place, that *where the People are not forc'd into Submiſſion, but freely elect their Monarch, there all remote inferences and doubtful caſes ought to be interpreted in favour of the Subject, becauſe the Form of Government had its beginning from them; and in this caſe Liberty proves its ſelf.* *Print, p.* 13.

This he admits, ſuppoſing that he had prov'd a *Conqueſt* of the Nation by *W.* 1.; which I ſhall examine in its place; tho what I have ſaid above, might take off the Inference from his *Hypotheſis*, eſpecial- Vid. ſup

ly conſidering the broken Succeſſion ſince *W.* 1. and what Authority the Conſtitution has given to the Peoples Choice, which *W.* 1. as appears by his Death-bed Declaration, and what followed immediately upon it, left untouch'd.

CONCLUSION.

I Cannot think that I have followed Truth too nigh at the heels for my Safety in the preſent Government, which I take to be built upon this ſtable Foundation; and that Proteſtant fondly flatters himſelf, who thinks to retain his Religion and Security upon any Terms, at a return of the Former, which ſome who were Inſtruments in ſetting up this, ſeem madly to contend for. But could men hope to find their private Accounts in ſuch a Change, yet ſurely the diſmal Proſpect of Common Calamities to enſue, ſhould induce them to ſacrifice ſuch low Ends, to the Intereſt of their Religion and their Country.

I am not ſenſible that I have miſrepreſented any Fact or Authority, tho I have not urg'd them with that ſtrength, which might have been by a better Pen. Perhaps what I have offer'd may give another Notion of the Succeſſion, than what many have imbib'd, who will think I violate what is ſacred. I have not urg'd the Illegitimation of the Children of *E.* 4. by *Richard* the Third's Parliament; becauſe, tho he was a King *de facto*, if the Character fix'd on him be true, he was a Tyrant as well as Uſurper upon the Innocent Prince *E.* 5. in whoſe Name he firſt took the Government upon him, and either terrified or cheated the People into a Compliance with his Pretences.

Tho I have not the vanity to believe, that any thing of my own can weigh with them who have thought otherwiſe before; eſpecially if they have liſted themſelves on a Side contrary to that, which no Diſadvantages can make me repent of: Yet I cannot but hope that the Authorities which I have produc'd, will occaſion ſome conſideration, till they are either evaded or diſprov'd. And being all legal *Objections* are anſwered; nor can any ſcruple of Conſcience be here pretended, without, much leſs againſt Law; What hinders, but that we ſhould exert our utmoſt in the Service of that Lawful Government, from which we receive Protection, and may expect Rewards for vertue, at leaſt the Defence of it, if we do not madly quit the ground which we have gain'd from them, who have hitherto made Vertue the greateſt Crime?

Wherefore, for us now to look back, after we have ſet our hands to the Plow, would be not only to diſtruſt that Providence which has given ſuch a wonderful Encouragement to Perſeverance; but were enough to tarniſh all our Actions, with the Imputation of making the publick Intereſt a Pretence for carrying on our own. 'Tis an happineſs indeed when they are twiſted and thrive together. But the Cauſe is ſuch, as a man ought not to fear to dye, nay to ſtarve for it. And how improſperous ſoever a man's endeavours for this, may prove, yet it may be a comfort to have ſown that Seed, which may grow up for the benefit of future Ages. Nor ought he to repine, becauſe another man hath guilded over his Name by what he has got by the ruin of his Country, or may have inſinuated himſelf again into Opportunities to betray it: Let it be enough for him, how much ſoever ſlighted and con-

contemn'd while he lives, to embalm his Memory, by a ſteddineſs to Truth, and the Intereſt of his Country; not to be ſhaken by croſs accidents to himſelf, or the Publick Cauſe. Let him ſtill act uniformly, while others live in perpetual Contradictions or Varieties; their Actions and their Principles thwarting themſelves, or each other, or varying with the State-weathercocks. Let them violate the Laws out of Loyalty; unchurch all Proteſtant Churches, but their own, out of Zeal againſt Popery; narrow the Terms of Communion, to ſpread the National Religion; confine all advantages to that Communion, for the Publick Good; make their King the Head of a Party, to ſtrengthen his hands againſt his Enemies; Deliver up Charters, and Retake them, gelt of their Nobleſt Priviledges, in performance of their Oaths to preſerve them; fight againſt their King, and yet urge the Obligation of Oaths requiring an unalterable Allegiance to his Perſon; aſſert that the Power is inſeparable from him, and yet may in his Abſence, without his Conſent, be transferr'd to a Regent, not to be Reaſſumed when he ſhould think fit to return; grant that he has broken the Contract, yet contend that he retains that Power, which he received from the Contract: Or that tho the Contract be broken, the Throne is not vacant: Or if it be vacant, yet an Heir has a Right; and ſo it is vacant, and not vacant at the ſame time: Or that after one has broken a Condition, upon which he took an Eſtate to himſelf and his Heirs in Fee-Simple or Tail, another ſhall enjoy it as Heir to him, and that in his Life-time; invite a Deliverer, yet reject the Deliverance.

Upon ſuch Principles as theſe, I find an Eminent *Engliſh* Prelate cenſur'd as a Deſerter of his Church, for going about, according to his great Learning, to juſtifie the Oaths taken to the preſent Government: And thus the Cauſe of *J.* 2. is made the Cauſe of the Church of *England*. Certain it is, whatever is now pretended, 'tis more difficult to juſtifie the taking up, or promoting Arms againſt a Deliverer, than an Oppreſſor. And if Arms againſt the laſt were lawful, even with the proſpect of involving Thouſands in the Miſeries of War; much more are they, in Defence of that Power which has reſtor'd thoſe Liberties, which the other Invaded, and reaſſured the Publick Peace. And whoever firſt engaged, and now draw back, not only brand themſelves for Traitors, but make it evident, that Ambition, Revenge, or ſome ungenerous Deſign, animated their Undertakings. And as I doubt not but they will meet with their due Reward; perhaps that Succeſs which has attended the Heroical Actions of our preſent King, may go further with ſuch men, to keep them to their Duty, than the moſt demonſtrative Proofs of Right, which they generally meaſure by the Event. And as no Cauſe or Action is juſt in their eyes, which is not proſperous; they in the language of the Poet are always on the ſide of the gods: But few are in this Point ſuch Philoſophers as *Cato*.

Letter to the B. of L.

Victrix cauſa Diis placuit ſed victa Catoni.

F I N I S.

APPENDIX
N. I. Vid. ſup. CAP. I. F. 4.

Thô thoſe Authors which I have referr'd to in the Book, have ſufficiently expos'd Sir Robert Filmer's *Notions; yet the following Obſervations made by me ſome Years ſince, upon the firſt applying of my Thoughts to ſuch Studies, may be more ſuited to meaner Capacities; at leaſt they who will not give themſelves time to read thoſe Elaborate* Treatiſes, *may be diverted with this Summary of Inconſiſtencies, which Numbers ſwallow down as blind Men do Flies.*

Sir Robert Filmer, *and ſome of our Divines, plaid againſt one another, in relation to Eccleſiaſtical and Civil Power, and Sir* Robert *againſt Himſelf.*

SInce Sir *Robert Filmer*'s Writings are recommended to the World, by the *Elogium* of the Infallible Dr. *Heylin*, that Man that profeſſed in print, that he could not reckon the early Death of the Wonder of his and following Ages, *Edw. the 6th, for an Infelicity to the Church of England*: You cannot but think that this his Monarch in Politicks, whoſe Death he laments, was not ſo ill-*principled in himſelf*, nor inclin'd to embrace ſuch Counſels, *but that his Affections to the Church were as exemplary*, as his Books have manifeſted them to be to the State.

Vid. Heylin's *Ep. to Sir* Ed. Filmer, *Certamen. Ep. p.* 208. Ut ſup. Cap. 1. *Pref. to Hiſt. of Ref.*

But me-thinks Dr. *Heylin*, by ſubſcribing to Sir *Robert*'s Judgment in Politiques, and conſequently to his *Anarchy of a mixt Monarchy*, does thereby confeſs that the Church is wholly ſubject to the Law of the State; and that the Civil Power is comprehenſive of the Eccleſiaſtical, the dividing of the Power being utter Anarchy and Confuſion.

Nay, that excellent Diſcourſe call'd *Patriarcha*, which the Doctor by way of Propheſy, (for I am ſure 'tis not to be imagin'd in the way of Nature) tells us would, when publiſh'd, *give ſuch ſatisfaction to all our great Maſters in the Schools of Polity, that all other Tractates in that kind would be found unneceſſary.* That *Catholicon*, (as he is pleas'd to call it) would ſuperſede the Divine Right of all Rulers, even in Eccleſiaſtical Affairs, other than Temporal Princes, who prior to their Unction, by which 'tis ſuppos'd that the Spiritual

Ep. to Sir Edw. Filmer.

Juriſdiction is convey'd, are inveſted with all that Power that the Patriarchs had, who according to our Prince of Politicians, *by Right in Nature, and God's ſpecial Ordinance, were abſolute Prieſts and Princes.*

Now one would wonder what Principle was receiv'd by King *Edw. the 6th*, more injurious to the Church, than what the Doctor and his Followers eagerly embrace.

What was the Judgment of that King, I have ſeen in a Manuſcript worth Diamonds, written by his own Hand, and dedicated by him to his Uncle the Duke of *Somerſet*, in the Year 1549. when, as I compute it, he was but Twelve Years old, entituled, *Petit Traité A léncontre de la Primaute du Pape.* Where amongſt other things, he diſcourſes thus of the Power of the Keys. *Le ſecond texte eſt que les clefz du ciel eſtoyent donnees non ſeulement à Pierre, mais auſſy aux autres Apoſtres; & par ceſt argument je repons qu'il n'eſtoit pas le Principal; car les autres recevoient la meſme authorité des clefz laquelle luy eſt commiſe: Pour laquelle choſe Paul appelle Pierre la* Coulomne, *non pas le fondement de légliſe, & ſon compagnon non pas ſon Gouverneur: car quelles ſont les clefz du ciel? l'authorite de pardonner les pechez? non, mais le preſchement de l'evangill de Dieu le pere, ouy bien de Dieu, non pas du Pape ou Diable, Et tout ainſi que quand, l'huys eſt ouvert quiconques veult peut entrer, ainſy quand Dieu envoyoit ſon ſincere Commandement & ſon Evangile, 'ils* ouuroient *la verité, la quelle eſt la porte du ciel: & donnoient aux hommes à entendre la ecriture, la quelle ſillz ſuivent, ilz ſeront ſaunez: parquoy on peut entendre que 'l'evangile, & la verité de l'ecriture ſont les ſeules portes qui conduiſent l'homme au royaume de Dieu: pour laquelle choſe St. Paul dit. Quiconque invoquera le nom de Dieu ſerra ſauue. Comment invoquerent ils celuy auquel ilz ne croient pas? Comment croyrent ilz en celuy du quel ilz non't pas ouy parler? Comment orront ilz ſans avoir un preſcheur? Et un peu apres il dit, Foy vient par ouir, & ouyr de la parolle, de Dieu. Au quatrieſme Chapitre aux Romans auſſy il dit, à celuy qui nœuure pas, mais croit en celuy qui juſtifie les meſchans, ſa foy luy eſt imputee à juſtice.*

This has been ſince tranſlated by a Lady of great Quality.

Galat. 2. 9.

2 Cor. 2. 92.

Rom. 10. 13, 14, 17.

Rom. 4. 5.

Maintenant nous prouuerons que le preſchement de l'evangile eſt la clef du ciel. Au huiteſme Chapitre aux Romans (comme jay deſſus dit) Paul affirme, que quiconque invoque le nom du Seigneur eſt ſauue, & que le preſchement de l'evangile, eſt l'entree en linvocation de Dieu: adonc il ſenſuit que le preſchement de l'evangile eſt l'entre du ſalut; D'avantage Paul affirme, que foy juſtifie, & que le preſchement de l'evangile fait la foy (la quelle choſe jay demonſtree icy devant) purtant il ſenſuit, que le vray preſchment eſt l'entree en juſtification: car tout ainſi qu'un terre ſemee peut produire fruit, porveu que la ſemence ne ſoit ſemee en terre plein de chardons, brieres, ou pierres: Et encore s'elle eſt ſemeé en telle terre elle ferra la terre un peu meilleure, ainſi, ſi le Commandement de Dieu eſt ſemé à cueur de honeſtes gens, ou de ceux qui ont un bon zele à la verité, il les confirmera en toute bonte, mais ſi aucuns ſont obſtinez & opiniatres, ilz ne peuent imputer la faute à l'ecriture veu quelle eſt en eux meſm. Pourtant nous nous devons efforcer que l'evangile, ſoit preſchee par tout le monde comme il eſt ecrit. Tout povoir m'eſt donne en la terre & au ciel: pourtant allez & preſchez à toutez creatures les baptizans en mon nom. *Puis donc quil eſt prouue que les clefs du ciel*

Rectiùs Dixieſme.

Mat. 28. 18.

Mark 16. 15.

ſont

ſont l'authorite de preſcher, & que l'authorite de preſcher eſtoit donnee à chacun Apoſtre, je ne puis voir comme par ce texte l'authorite eſtoit donnee à Pierre plus que aux autres, &c.

Now, in ſhort, here lies the Subſtance of theſe Principles, the Danger of the improvement of which was happily prevented by Queen *Mary*'s Reign.

The Power of the Keys, or Church-Power, is only Authority to preach the Goſpel, that was equally given to all the Apoſtles; therefore all Apoſtles had equally the Power of the Keys, and ſo were equal: And by conſequence will ſome ſay, all Preachers after them, that had only a general and ordinary Commiſſion to preach, are equal, of the ſame Order to one another, Order being taken for a Power to do a ſpecial Act, as the Learned Biſhop *Andrews* informs us; *Ordinem eſſe poteſtatem ad actum ſpecialem, non à me dico, Schola hoc dicit tota.* Ep. Wynton. Reſp. ad 3 Ep. Pet. Moline. p. 192.

Even the Authority to preach the Goſpel, which was in an eſpecial manner committed to the Apoſtles, and by Ordination by them practiſed, conferr'd upon others, and always continued in the Church, ſome great Church-men will tell us ought to yield to the Civil Power ſo far, that no Man forbidden by the Magiſtrate ought to preach, without an immediate Commiſſion from Heaven, by working of Miracles. Whereas others will ſay, 'twas enough that the Power was given at firſt, and atteſted to by Miracles. Something agreeably to which, a Learned Church-man ſays, *Touching the Worſhip of God:*

Since the Divine Eſtabliſhment of the Publick Chriſtian Service is contained in the Goſpel, no Authority upon Earth hath any right to prohibit this: And thoſe Chriſtians that rightly worſhip God, in the true Catholick Communion, according to the Apoſtolical and Primitive Chnrch, have a right to hold ſuch Aſſemblies for the Chriſtian Worſhip, as appear uſeful for the Church's Good, tho this ſhould be againſt the Interdict of the Civil Power. Falkner's *Chriſtian Loyalty*, p. 41.

This is greatly oppoſite to the Judgment ſince deliver'd in the Caſe; yet by adding falſe Terms, he enervates his Argument; for his Argument is taken from ſuch Service its being contain'd in Scripture; but upon that he would ſupport thoſe Modes of Worſhip, which though not contain'd in Scripture, were us'd in the Primitive Church, which is an *Individium vagum*, which ſome confine to the Life-time of the Apoſtles, ſome extend to the whole firſt three Centuries, ſome even to this, according to the Doctrine of Infallible Tradition. Suppoſe, for Example, that in ſuch Aſſemblies as are form'd with or without leave of the Civil Power, the Sign of the Croſs be uſed as a Symbol of dedicating to the Service of Chriſt, thoſe who are let into *Catholick Communion*; and this they judg uſeful to the preſent, and according to the *Primitive Church*, it will be a Queſtion, Whether the retaining of this, againſt a particular Interdict of the Civil Power, (which is ſuppoſable at leaſt) is to be juſtifi'd upon theſe Grounds? Put this Argument into Form, and you will find he has more or leſs in his Concluſion, than in his Premiſes. Rightly taken, I conceive it lies thus:

If the Goſpel contains a Divine Eſtabliſhment of Publick Chriſtian Service; ſuch Publick Chriſtian Service as has therein Divine Eſtabliſhment, no Authority upon Earth hath any right to prohibit.

But the Goſpel does contain a Divine Eſtabliſhment of Publick Chriſtian Service: Therefore ſuch Publick Chriſtian Service as has therein Divine Eſtabliſhment, no Authority upon Earth has Power to prohibit.

This being taken for granted, he proceeds; What no Authority upon Earth has right to prohibit, may be done or perform'd notwithſtanding the Interdict of the Civil Power.

But ſuch Service, *ut ſupra*, no Authority upon Earth hath right to prohibit, therefore it may be perform'd notwithſtanding the Interdict of the Civil Power.

But he concludes contrary to the Laws of Arguing; *That thoſe Chriſtians who rightly worſhip God in the True Catholick Communion, according to the Apoſtolical and Primitive Church, have a right to hold ſuch Aſſemblies for the Chriſtian Worſhip, as appear uſeful for the Church's Good.*

Now if hereby he means that they who worſhip God according to the Scriptures, even though taking in the Practice of the Apoſtles, have not this Right, unleſs they do it in the manner us'd till, or at the end of the firſt three hundred Years after Chriſt, which is the modeſteſt acceptation of Primitive Times. Here, by adding of Circumſtances, his Concluſion has really leſs than the Premiſes, becauſe it ties up them whom the Scripture has left free, and takes from the Authority of Scripture where the Foundation was laid, and undermines it by going to ſupport it with the ſpecious words of *Apoſtolical* and *Primitive*, which ſtill are of doubtful Acceptation. Whereas ſome believe that no manner of Worſhip is to be term'd *Primitive*, which was not truly Apoſtolical, that is, us'd by the Apoſtles themſelves, others call every thing within thoſe three Centuries at leaſt, *Primitive*, and therefore Apoſtolical.

But to be ſure here is a very falſe way of Arguing, if he uſes any, or elſe 'tis *gratis dictum*. But take it for an Argument, and then to his purpoſe, there is more in the Concluſion than in the Premiſes; for the Premiſes are only of ſuch Publick Service as is contain'd and eſtabliſh'd in the Goſpel; and thence he would conclude, that whatever has been practis'd in the Primitive Church, in the Publick Service of God, may be continued notwithſtanding the Interdict. Nay, he would go farther, That they may in their Aſſemblies practiſe according to their own Judgment, of *what is uſeful for the Church's Good*. If it be ſaid, that he means no more, than that they may hold ſuch Aſſemblies for Chriſtian Worſhip as appear uſeful, that is, 22 Car. 2. c. 1. *of Five beſides a ſingle Family*, or more, as appears uſeful, if he means not that they may aſſemble, and worſhip, in ſuch a manner as appears uſeful, he excludes the Worſhip out of the Aſſembly, and then it may be a Silent Meeting if the Civil Power pleaſe, and is leſs than his Premiſes warrant.

I muſt confeſs, he ſeems to intend the amuſing, rather than ſatisfying his Readers, by putting in *the true Catholick Communion*; for he muſt mean either that what-ever Publick Service is according to the Apoſtolical and Primitive Church, is in *true Catholick Communion*, and ſo *vice verſa*, that what-ever is in *true Catholick Communion*, is according to the Apoſtolical and Primitive Church; ſo that the Church becomes the Rule to the ſupplanting of Scripture: or

elſe

elſe, that to worſhip God rightly and warrantably, notwithſtanding a Civil Interdict, 'tis not enough to be according to the Apoſtolical and Primitive Church, unleſs it be in the true Catholick Communion, that is, with ſuch Terms of Communion as Chriſt himſelf, or his Apoſtles made Catholick and univerſally obliging; and indeed in this ſenſe, though he has not obſerv'd it, he comes up fully to the Force of his Argument.

The great *Sanderſon*, whoſe Judgment, where it was according to that *lumen ſiccum*, the general want of which is to be deplored, is of great Authority, has gone about to ſplit the Hair between two Extreams, in relation to Eccleſiaſtical Juriſdiction, and lays down what he ſays is moſt conſentaneous to the Doctrine of the Church of *England*, and moreover to the Laws of the Kingdom; *Quod & Doctrinæ Eccleſiæ Anglicanæ & Regni inſimul Legibus maximè ſit conſentaneum:* Which, by the way, is an inſinuation that the Church of *England* holds ſome Doctrine not conſentaneous to Law, and it may be the Canons of 1640 might be inſtanced in. *Sanderſon de Obligatione Conſcientiæ, Pag. 209.*

Now his Notion is, that the *jus condendi Leges Eccleſiaſticas*, that is, the Legiſlative Power in Eccleſiaſtical Affairs, is in the Biſhops, Presbyters, and other Perſons duly elected by the Clergy of the whole Kingdom, and duly aſſembled in a lawful Synod.

Upon this I would be bold to ask the Queſtion, How this agrees with his Conceſſion, That the King is Supream Head and Governour over all Perſons and Cauſes, as well Eccleſiaſtical as Civil; ſince his own Argument is, That he who is Supream, has the Power or Right to make Laws. But the King is Supream, wherefore, according to him, the King, and not the Clergy, hath this Power. This I think is the unforc'd Conſequence from his other Aſſertion; *Poteſtatem* νομοθετικὴν *eſſe poteſtatem* αὐτοκρατορικήν. *Hoc eſt jus ferendi leges quæ obligant totam communitatem eſſe penes eum ſolum, ſive ſit is ſingularis perſona, ut in ſtatu Regiminis Monarchici, ſive plures ut in aliis, qui cum ſummâ poteſtate toti communitati præeſt.* Nay, he argues that it muſt needs be ſo in reaſon; *Præcipuus actus gubernationis præcipuam requiret poteſtatem, &c. Eſt autem* νομοθεσία *ſive legum latio, actus gubernationis ſupremus & præcipuus; Non ergo poteſt exerceri niſia perſona habente, aut ſaltem in virtute & ex authoritate habentis ſupremam authoritatem & jurisdictionem in communitatem ſibi ſubjectam.* *Pag. 188.* *P. 192.* *Pag. 186.*

The chief Act of Government, requires the chief or Supream Power.

But the making of Laws, is the Supream Act of Government.

Therefore it cannot be exerciſed but by a Perſon having, or at leaſt by Virtue, and from the Authority of the Perſon having Supream Power and Juriſdiction over the Community ſubject unto him. Now in this the Doctor ſeems to be uniform to himſelf, ſince he grants that the Clergy cannot exerciſe this Power without the conſent of the King, and ſo they act by virtue of his Authority. But it will be juſtly queſtion'd, whether the Power be not in the King, the Authority being his: For a Legiſlative Power, wherever plac'd, is uncontroulable, and ſelf-ſufficient; and ſo the Doctor tells us; *Poteſtas* νομοθετικὴ eſt αὐτοκρατορικὴ; and if the Power, the

jus condendi Leges Eccleſiaſticas be in the Clergy, then that Power is ſelf-ſufficient, αὐτοκρατορικὴ; and by conſequence their Act of Legiſlation made known, obliges the Community, *Eodem omninò modo*
Pag. 84. *quo Princeps qui habet poteſtatem νομοθετικὴν, ferendo leges obligat ſubditos ad ipſarum obſervationem.*

But perhaps we may be told that a Difference is here to be taken between *jus condendi Leges*, and *poteſtas νομοθετικὴ*; but then the Doctor muſt be allowed not to talk with coherence; For he takes it for granted, *Poſſe de novo condi leges de ritibus, rebus & perſonis Eccleſiaſticis, omnibuſq; ſacri cultûs externi circumſtantiis ad ordinem honeſtatem, & edificationem ſpectantibus, extra eas quæ ſunt à Chriſto & ejus Apoſtolis in Sacris Literis traditæ*; which is, in ſhort, that there is ſomewhere a Legiſlative Power in Matters Eccleſiaſtical, not determin'd in the Scriptures. Now this very Power, *Jus condendi Leges Eccleſiaſticas*, he places in Eccleſiaſtical Perſons; wherefore the Power which he aſcribes to them in Eccleſiaſtical Affairs, is a Legiſlative Power. And ſome will queſtion, how much ſoever the Clergy complement the King, whether they take not the Reſtraint which they ſubmit to, to be a Condeſcenſion; nay, that Power is by him aſcrib'd to the Clergy in the very ſame Expreſſions, wherein
Pag. 189. he expreſſes the King's Power. For as he ſays, *Jus condendarum*
Pag. 209. *Legum*, is *penes unum Regem*; ſo he tells us, *Jus condendi Leges Eccleſiaſticas*, is *penes Epiſcopos, &c.*

I would gladly ſee the Difference rightly ſtated upon theſe Principles.

The Clergy have the Power of making Laws, or the Legiſlative Power in Eccleſiaſtical Matters, yet the Exerciſe is reſtrainable by the King. *Jus condendi Leges Eccleſiaſticas eſſe penes Epiſcopos, Presbyteros aliaſq; perſonas à totius Regni Clero ritè electas, & legitimâ Synodo congregatas; Ita tamen ut ejus juris exercitium in omni Republicâ Chriſtianâ ex Authoritate Supremi Magiſtratûs politici pendere debeat; Idq; à parte ante, & à parte poſt.*

The King has the Legiſlative Power in Civil Affairs, yet the Exerciſe is reſtrainable by the People; *Cum dicimus penes unum Regem*
Pag. 189. *eſſe jus condendarum Legum, non id ità intelligendum, quaſi vellemus quicquam Regi libuerit jubere id continuò legis vim obtinere, nam & populi conſenſum aliquem, aliaq; non nulla ad Legem conſtituendam requiri mox oſtendam.*

Ergo, Quere, Whether Church-men are not Supream in Eccleſiaſtical Affairs, as the King is in Civil?

It will be ſaid, Admit they are, yet that Power may be very conſiſtent with Monarchy; for which purpoſe one need but tranſcribe, with very little variation, the Doctor's words, applying what he ſays of the Lawgiver in Temporal, to the Eccleſiaſtical Lawgivers.

Pag. 203. *Poſſe duo hæc (Regis inquam conſenſum & ſupremum* ECCLESIASTICORUM *in ferendis legibus poteſtatem) ſimul & amicè ſatis conſiſtere, præterea quod in rebus ipſis nulla videtur eſſe repugnantia) vel inde conſtare poteſt, quod Angliæ noſtræ* CLERICI, *quorum ſupremam poteſtatem in* ECCLESIASTICIS *ante infæliciſſima hæc tempora omnes hujus Regni incolæ prolixiſſimè ſemper agnoverunt, nunquam tamen legiſlativam ſuam poteſtatem ità exercuerunt, ut ſine Regum ſuorum conſenſu Leges aliquas condiderint.*

Now

Now whether the Doctor's Reflections upon them that feign a Power coordinate with the King; nay, whether his imputation of Perjury upon them who deny the King a Legiſlative Power, after having ſworn that he is Supream Head and Governour over all Cauſes and Perſons, as well Eccleſiaſtical as Civil, will not fall upon himſelf, ſome will queſtion; and they know not whether he were not one of them that believ'd *Contradictoria poſſe ſimul eſſe vera.* Pag. 191.

And thus again they argue out of him; *In ſtatu Monarchico unius Regis perſonæ inhæret ſumma poteſtas.* Pag. 188.

" In a Monarchy, the Supream Power is inherent in the Perſon of " the King only.

But ours is a Monarchy, therefore the Supream Power is inherent in the Perſon of the King only, he is *omnium perſonarum cauſarumq; in ſuis Regnis Supremus, imò & ſolus ſupremus Moderator.* Making of Laws, either in Eccleſiaſtical or Civil Matters, is an Act of the Supream Power; therefore the Right of making Laws, in the one as well 'tother, is in the King, in whom the Supream Power is inherent, not in Church-men. Ibid. Pag. 192.

But if one may diſpute the Authority of ſo great a Man, one may be bold to ask what proof there is, that what he aſſerts about Eccleſiaſtical Juriſdiction, is conſentaneous, *& Doctrinæ Eccleſiæ Anglicanæ & Regni inſimul legibus?*

For take it in the largeſt ſenſe, not that the Clergy have the Legiſlative Power ſo qualified as aforeſaid, but that they and the King have a Power of making Laws in Eccleſiaſtical Matters which ſhall oblige the Community, without any farther Conſent or Ratification; This ſome will ſay may, for ought they know, be agreeable to the Doctrine of the Church, or Church-men; but where is the Law to warrant it they are to ſeek. And beſides the ſeveral adjudg'd Caſes that the Laity are not oblig'd, by any Canons of the Clergy, or Eccleſiaſtical Laws, though made with all the Circumſtances taken in by the Doctor; They urge the Authority of this King in his Parliament, where 'twas enacted, that *the Canons made in the Year* 1640, ſhould not be confirm'd; which ſhews that they ſtood in need of Parliamentary Confirmation to become Laws. And 'tis to be obſerved, that there had been the Royal Aſſent to that Exerciſe of Eccleſiaſtical Power, both *à parte ante*, and *à parte poſt.* 13 Car. 2. c. 12. *This was written before that Parliament was diſſolved.*

Some Men poſſibly may tax this Great Author with Deceit, in giving the King a Legiſlative Power in general, without excluding thoſe Eccleſiaſtical Matters which the Great Legiſlator left undetermin'd; And yet afterwards, when had he ſaid enough to gain Credit, ſtealing away a large ſhare for the Clergy; but yet he had given ſo much before, that he could not leave any thing to the Clergy, or the Laity either, without manifeſt contradiction. He tells us, that in every Monarchy the Prince has Supream Power; that this Supream Power is a Legiſlative Power, and with us extends to Matters Eccleſiaſtical, as well as Civil; that a Legiſlative Power is Self-ſufficient and Arbitrary, and that that Prince who has a Legiſlative Power, obliges his Subjects, *ferendo Leges*, by the exerciſe of this Power; and that muſt be in what manner ſoever he exerciſes it, otherwiſe 'tis not αὐτοκρατορακή. Yet in another place he ſays, what

Pag. 189. the King commands has not the Force of a Law, that is, does not oblige, without ſome Conſent of the People.

And whereas he places in the King the Sanction of Laws in general, as being the principal Cauſe that introduces the Form; and this he calls, *jus condendarum Legum*; this Right or Power he places in the Clergy for Matters Eccleſiaſtical, and ſo wholly ſhuts out the King and Laity, who have, according to him, neither the Propoſing, nor the Sanction: And therefore that reſtraint of the Exerciſe which he yields to the Civil Power, amounts to no more than a natural, not moral Power.

Prælectio 7ma de Obligatione legum humanarum ex parte cauſæ efficientis. And this appears farther, in that this was under the Head of the efficient Cauſe of Humane Laws, which he makes the Clergy to be in Matters Eccleſiaſtical, and that without Aid of the Civil Power, as he explains himſelf, ſpeaking of the Matter of Laws.

Præl. 7ma. p. 174. *Leges autem Eccleſiaſticas hìc intelligo, non quæ à perſonis Eccleſiaſticis ſine Magiſtratus civilis authoritate conſtitutæ ſunt (quæ ſchola non eſt hujus loci ſed ad alterius generis cauſam, efficientem, ſcilicet, pertinet, &c.*

I conceive he places the Authority of making Eccleſiaſtical Laws in the Clergy, in the ſame manner that he does any Act of the Miniſtry; the Power of which, according to ſome Great Men, remains, though the Act may be reſtrain'd, which ſome Men cannot underſtand for their Hearts, for they ſuppoſe that one may always act according to a lawful Power. But we are otherwiſe taught;

Ep. Wynton. Reſp. ad 3 Ep. Pet. Moline. p. 191. *Poſt enim (quàm dicunt) degradationem manet poteſtas ad actum ordinis, cujus poteſtatis uſus prohiberi poteſt, poteſtas ipſa tolli non poteſt.*

To put an end to all theſe Diſputes, Doctor *Heylin*'s perpetual Dictator in Politicks, places a Power in *Adam* as Abſolute and Arbitrary *as all the Acts of his Will*, and does nothing if he goes not to prove that this his Power was to be obey'd in every Act of his Sovereign's Will, relating to things Sacred, as well as Civil; for a right to Command, without an Obligation upon others to obey, is an empty inſignificant Notion. Well, this being ſettled, beyond diſpute, in *Adam* and in his Poſterity, by right of *Fatherhood*, and in *Cain* by right of Birth, (though by the way he never was veſted with ſuch Power over his Brother, over whom we are told 'tis promis'd, for that *Abel* died in the Life-time of *Adam*) though it were *indiviſible*, and of right an univerſal Monarchy ſettled upon the Eldeſt *Parent*; yet it lawfully deſcended, or came, upon Sons in the Time of their Fathers; as upon *Judah*, who by virtue of his Patriarchal Power, condemn'd *Thamar* to be burnt, while his Father *Jacob* was in being: Such as could ſet up for themſelves in any of the divided Kingdoms of the Earth, had, in ſpight of contradiction, juſt Shares in this ſtill *indiviſible* Monarchy; and not only by conſequence, but expreſly are we taught, that Uſurpers and Rebels have good Authority, ſuch as ought to be obey'd, though the lawful Prince be alive.

Patriarcha, p. 19. Patriarcha, p. 12. Patriarcha, p. 13.

But theſe, beſides many other Abſurdities and Contradictions, which Sir *Robert* is pleas'd to divert us with, are but neceſſary Conſequences upon the Suppoſition, that every one who is Supream in Power, however he come by it, derives his Title to an indiviſible Power; that is, all Power, from *Adam*, which holds not only as to all

Patriarcha, p. 19. *All Kings, &c. are to be reputed*

Power

Power within any particular Diviſion or Tract of Land, but all over the World, as it is ſuppos'd *Adam*'s Power was. If it be meant of the Father of the People within ſuch a Tract of Land, then he derives not his Title from the Eldeſt Parent; and by Conſequence entitles ſuch an one only to a ſubordinate Power. And therefore one would think that Sir *Robert* has heap'd together all the Abſurdities flowing from ſuch an Opinion, with an intention to expoſe it to all Men of Judgment. They that will ſay 'twas otherwiſe, ſurely are none of his Friends, but expoſe him as they do themſelves, in contending ſo eagerly for the maintenance of what, if he ſpoke his Judgment, argues him to be none of the wiſeſt, if 'twas not none of the honeſteſt.

ted the next Heirs to thoſe firſt Progenitors, who were at firſt the natural Parents of the whole People.

Prſf. to the Power of Kings.

If, as one of Sir *Robert Filmer*'s pedantick Admirers flouriſhes, *All Readers are inſenſibly under his Command, as if they were his Subjects, and are his by right of natural Soveraignty; and a Reaſon ſo far exalted above ours as his, makes him appear like thoſe Kings of old, who were in Stature much ſuperior to their Subjects, and ſeem'd ſo far to over-top the reſt, as if Nature mark'd them out for Heads of all*;

If ſtill, this exalted Genius be guilty of Self-contradictions, and undermining his own Foundations, what ſilly Creatures are they, or what Slaves in their Underſtanding, who are made Captives without Reſiſtance, and are Slaves by right of Conqueſt. And if all Men fell under his Title, either of natural Soveraignty, or of Conqueſt, how deſpicable were the Condition of Humane Nature.

But ſurely Contradictions will not down with all Men; 'twere in vain to ſhew ſuch eaſy Wretches, as are led captive by Sir *Robert*'s falſe Reaſonings, wherein his Fallacies lie, as in not diſtinguiſhing the Power whereby a Nation is govern'd, from the Perſon or Perſons inveſted with Power; nor conſidering the Manner wherein it is enjoy'd, whether Abſolutely, or with Limitation; or whether the Adminiſtration or Exerciſe be according to the lawful manner; which to them that are able to conſider, would evince to how little purpoſe 'tis urg'd that *Soveraignty is indiviſible.* For an undivided Soveraignty may be in ſeveral in unequal manners, and ſometimes in equal. As in the Roman *Conſuls* or *Decemvirs* at leaſt, and that by Sir *Robert*'s own confeſſion:

The Law, ſays he, *of the Twelve Tables affirms*; *Regis Imperio Duo ſunto, iiq; Conſules appellantur.* "*Let Two have Regal Power, and* "*let them be called Conſuls. Alſo the Judgment of* Livy *is, that the* "*Sovereign Power was tranſlated from Conſuls to Decemvirs, as before* "*from Kings to Conſuls.*

Yet in another Place our Learned Knight, according to his uſual Inconſiſtencies with himſelf, tells us, that *but one of the Conſuls had Regality, for they govern'd by turns:* Which, by his Favour, I take it, was only in the Wars, which require but one General, not at *Rome:* However he confeſſes, that all the *Decemvirs* had *Regality*, for he pretends not that they govern'd by turns, and he ſays, they were *choſen to make Laws*; and though ſome will queſtion whether a Supream Gubernative implies a Legiſlative Power, no Man will queſtion, but a Legiſlative takes in the other, or at leaſt may,

at the pleaſure of him or them in whom it is veſted. But I would fain know which one of them had right to give Law to the reſt, or had the Soveraignty in him alone: And for it to be in more than one, is (as we are inform'd by him) *quite contrary to the indiviſible Nature of Soveraignty*. Yet he grants it may eſcheat to the Supream Heads of Families, that is more than one within that which had been at leaſt immediately before the ſame Community; nay, and that it may be exerciſed by many in other Acts, beſides the choice of one to head them, which he owns in theſe words:

Obſerv. touching Forms of Gov. P. 47.

Ib. p. 60, & 61. *Thoſe Governments that ſeem to be popular, are kinds of petty Monarchies: which may thus appear; Government is a Relation between the Governors and Governed, the one cannot be without the other,* mutuò ſe ponunt & auferunt. *Where a Command proceeds from a major part, there thoſe individual Perſons that concurr'd in the Vote, are the Governors, becauſe the Law is only their Will in particular.*

Yet, under correction, though ſome of thoſe alter their Wills, and ſome which were againſt the Law become for it, provided that the Ballance continue as 'twas when the Law paſs'd; in this Caſe the Law cannot be chang'd by thoſe very Perſons which made it, and therefore ſome things which receive Force from the meer Will of the Parties, yet continue to oblige againſt their Wills, and the Government is in the united Body, not in thoſe who made that Law, for the Power cannot be derived from them who chang'd their Wills, but out of the whole Body; however no one of them were a Monarch, and yet what hinders but that there was a Soveraign Power amongſt them?

There can be no Obligation which takes ſtate from the meer Will of him that promiſeth the ſame. Power of Kings, *Fol.* 1.

This Power it ſeems Sir *Robert* knows not how to diſtinguiſh from the Exerciſe or Act of Power. *The Supream Power being an indiviſible Beam of Majeſty,* he tells us, *cannot be divided or ſettled upon a Multitude; God would have it fixt in one Perſon, not ſometimes in one part of the People, and ſometimes in another, and ſometimes, and that for the moſt part, no where; as when the Aſſembly is Diſſolv'd, it muſt reſt in the Air, or in the Walls of the Chamber where they were aſſembled.* Agreeable to which he ſays elſewhere; *By this means one and the ſame Aſſembly may make, at one Sitting, ſeveral Forms of Common-Wealths.* So that he ſuppoſes the different Exerciſe to alter the form of Government, and that it Diſſolves when the Exerciſe ceaſes, or is diſcontinued: which Error is of kin to theirs (whoever they are) that *make a Church barely to relate to Acts of Worſhip.*

But to wave theſe Niceties, as above their reach, who cannot of themſelves diſcern palpable Contradictions, and wherein Sir *Robert*, under pretence of Friendſhip, ſerves them as *Joab* did *Abner*. I ſhall take from his thoughts their artificial Dreſs, and lay them open in their naked Deformity, that every rational, at leaſt honeſt Man and good Subject, may ſtart from them; the Devil cannot be ſo far tranſform'd into the ſhape of an Angel of Light, but that his cloven Foot muſt appear.

Sure

Sure I am, that he undermines the Right of all preſent Kings or Families, and makes the Right of Succeſſion as doubtful as the Event of War, admitting none but Rebels within the poſſibility of Uſurping; and thereby yielding that any Foreign Prince may lawfully diſpoſſeſs one in the Throne, or interrupt the Succeſſion: And if any Subject can proſper in his Rebellion, though the lawful Prince or Heir be alive; and *He that takes upon him the Power of a Superior, ſins ſufficiently, and to purpoſe.* Yet God's Providence having diſpoſſeſs'd the former, and declar'd in favour of the Uſurper, the People (if we believe him) are adopted into the Obedience of another Fatherly Power, and not having Right to caſt off this Father, rais'd up by God himſelf, *who only hath Right to give and take away Kingdoms*; By his Doctrine, all the Endeavours towards his Majeſty's Reſtoration, are condemn'd, for that 'twas againſt the Title made by the Almighty, and any voluntary Act of the People being vain, not obliging them any longer than they pleaſe, as all the Force came from their own Wills; Beſides, no Act of the People having any binding or moral Effect, ſince they are to be meerly Paſſive, they being always and unalterably as to Humane Cauſes, under the Power of the Natural Fathers;

It was written Tempore Car. 2.

Anarchy, p. 273. *Many times, by the Act of an Uſurper himſelf, or of thoſe that ſet him up, the True Heir of the Crown is diſpoſſeſt, God uſing the Miniſtry of the wickedeſt Men, for the removing and ſetting up of Kings; in ſuch Caſes the Subjects Obedience to the Fatherly Power muſt go along with, and wait upon God's Providence, who only hath a Right to give and take away Kingdoms, and to adopt the Subjects into the Obedience of another Fatherly Power.*

By theſe Principles the Uſurping Powers would ſtill have lawful Authority; But to be ſure, according to him, any Prince had equal Right with the Ejected Monarch, to try for the Kingdom: For though Sir *Robert* in his Preface to his Obſervations on Mr. *Hobbs*, asks the Queſtion, *How a Subject by Covenant can get a Right of Soveraignty by Conqueſt, when neither he himſelf hath Right to Conquer, or Subjects a Liberty to Submit?* Yet he has not one Objection againſt the Lawfulneſs of a Foreign Prince's conquering at any Time, or with any Circumſtances; which ſhews that his Definition of Uſurpation was intended to take in all unlawful uſurpings of Power, without which 'tis very lame. But thus it runs:

For in Grants and Gifts that have their Original from God or Nature, as the Power of the Father hath, no inferior Power of Man can limit nor make any Law of Preſcription againſt them. Ibid.

Power of Kings, F. 1.

Uſurpation is the reſiſting and taking away the Power from him, who hath ſuch a former Right to govern the Uſurper, as cannot lawfully be taken away; ſo that it cannot be juſt for an Uſurper to take advantage of his own unlawful Acts, or create himſelf a Title by continuation of his own Injuſtice, which aggravates, and never extenuates his Crime; and if it never can be an Act indifferent for the Uſurper himſelf to diſobey his Lawful Soveraign, much leſs can it be indifferent for him to command another to do that, to which he hath no Right himſelf.

Directions for Obedience to Governours. p. 75. *Laſt Ed. p. 165.*

So that Uſurpation is the unjuſt taking away, or diſpoſſeſſing another of Power, and for it to be unjuſt, it muſt be the Act of a Subject againſt a Lawful Prince, wherefore none but a Rebel can uſurp; this Man, by continuance of his Injuſtice, can never gain a Title. Yet in another place, in expreſs terms, he contradicts himſelf, and affirms, that he may, and does not ſo much as take in Preſcription in a Man and his Heirs againſt the Party diſpoſſeſs'd, and his Heirs to ſtrengthen it; and indeed that could not well be urg'd by him, becauſe,

Directions for Obed. p. 155. laſt Ed.

Directions for Obedience, p. 70. *last Ed.* p. 158.

because that, he tells us, comes in by *positive Humane Laws*, which can signify nothing against any Grants or Gifts which have their *Original from God or Nature, as the Power of Kings and Fathers has.*

But let's take his words and see whether any thing can be a more direct Contradiction.

Anarchy, p. 275. *last Ed.* p. 253.

Many times by the Act of an Usurper himself, or of those that set him up, the true Heir of the Crown is dispossest, God using the Ministery of the wicked'st Men for the removing and setting up of Kings: in such Cases the Subjects Obedience to the Fatherly Power must go along and wait upon God's Providence, who only hath right to give and take away Kingdoms, and thereby to adopt Subjects into the Obedience of another Fatherly Power.

So that he makes a Government by wrongful Election, or Conquest, still to be the Fatherly Government, and such as the People are bound to obey; for he puts the case of the Usurpers being set up by others, as well as his own Act. But the poor Prince it seems, has in neither Case right to the Peoples Obedience; and he avows the Conclusion which he condemns upon Mr. *Hobbs* his grounds,

Preface to Obs. on Hobbs *his* Leviathan.

(viz.) The Rights of Soveraignty may be forfeited; for the Subject cannot be at liberty to submit to a Conqueror, unless his former Subjection be forfeited for want of Protection. But he tells us, the Subject is at liberty when the true Heir is dispossest. *Ergo.*

But he has a very fine Notion to evade the Consequence of Forfeiture, and yet justify the Peoples Obedience to the Usurper.

Direct. for Obed. to Government, p. 72.

If a Superiour cannot protect, it is his part to desire to be able to do it; which he cannot do in the future, if in the present they be destroyed for want of Government: therefore it is to be presum'd, that the Superiour, desires the preservation of them that should be subject to him, and so likewise it may be presum'd, that the Usurper in general doth the Will of his Superiour, by preserving the People by Government. And it is not improper to say, that in obeying an Usurper, we may obey primarily the true Superiour, so long as our Obedience aims at the Preservation of those in subjection, and not at the Destruction of the true Governour.

With this pious Intention, and mental Reservation, we may, it seems, obey an Usurper, though the Prince have not forfeited his Right. And yet he says, *The Subject cannot be at liberty to submit to a Conquerour, unless his former Subjection be forfeited for want of Protection.* If by a Conquerour he means a Foreign Prince, as by Usurper he means a Subject, the Argument is much stronger, that an Usurper ought not to be obey'd; whereas he says, he ought, which cannot be, unless the *former Subjection be forfeited*: *the first Usurper*, he tells us, *has the best Title, being in possession by the permission of God.* But if he be dispossest, the second, or last, has a better than what continues with the first, or his Heirs, if the People are adopted into another fatherly Power. Yet, according to this *substratum*, there can be no Title but what comes in a more natural way from *Fatherhood*; for *Adam being commanded to multiply and people the Earth, and to subdue it, and having dominion given him over all Creatures, was thereby Monarch of the whole World, none of his Posterity had any right to possess any thing but by his Grant or Permission, or by Succession*

Pref. to Observ. on Arist.

Succeſſion from him. The Earth, ſaith the Pſalmiſt, *hath he given to the Children of Men.* Which ſhews moſt plainly to one of ſublimated reaſon, *that the Title comes from Fatherhood.* For it could not have been given to the Children diffuſively, unleſs they had a Father; for if there had been no Father, there could be no Child.

I muſt confeſs I know no Man who has a better faculty of arguing againſt himſelf; I thought he was for the Abſolute Power of every King within his own Dominion, that is his drift if he be ſteady to any Deſign but Confuſion; yet he directly oppoſes it, and is only for one King over all, and therefore he ſays, *When we find, that in the time of* Abraham, *which was about* 300 *Years after the Flood, in a little Corner of* Aſia, *five Kings at once met in Battel, moſt of which were but Kings of Cities a-piece*, &c. *We muſt conclude, that theſe were but ſome petty Lords under One great King.* Patriarcha, p. 17.

For ſince Nature hath not diſtinguiſh'd the habitable World into Kingdoms, nor determin'd what part of a People ſhall belong to one Kingdom, and what to another, it follows that the Original Freedom of Mankind being ſuppos'd, every Man is at liberty to be of what Kingdom he pleaſes; and ſo every petty Company hath a right to make a Kingdom by it ſelf; and not only every City, but every Village, and every Family, nay, and every particular Man, a liberty to chuſe himſelf to be his own King if he pleaſe; and he were a Mad-man, that being by Nature free, would chuſe any Man but himſelf to be his own Governour. Thus to avoid the having but of one King of the whole World, we ſhall run into a liberty of having as many Kings as there are Men in the World. Anarchy, p. 268

His Argument, if he makes any, is this. If Mankind were free by Nature, there would be as many Kings as there are Men in the World; but they are not free, Therefore there is but One King of the whole World; nor can it ever be otherwiſe; *For the Monarchical Power of* Adam *the Father of all Fleſh, was by a general binding Ordinance ſettled by God, in him and his Poſterity, by Right of Fatherhood.* Wherefore being ſettled on the Poſterity, it muſt, according to him, deſcend to the Eldeſt; and could not be otherwiſe diſpos'd of by *Adam* himſelf, (ſo that his Grant or Permiſſion, or anothers Conqueſt, would be invalid.) for *ſuch Heirs are not only Lords of their own Children, but alſo of their Brethren, and all others that were ſubject to their Fathers; and therefore we find that God told* Cain *of his brother* Abel, *His deſires ſhall be ſubject to thee, and thou ſhalt rule over him.* Anarchy, p. 266. Patriarcha, p. 19.

Sir *Robert* tells us, That *all Kings that now are, or ever were, are or were, either Fathers of their People, or the Heirs of ſuch Fathers, or Uſurpers of the Right of ſuch Fathers.* All it ſeems are with Title, and yet in the very next Lines, he ſays in effect, That none have Title but one at a time, and that is only the next Heir from *Adam*, unleſs *Adam* can have ſeveral Heirs at the ſame time to his univerſal Monarchy. Which, *ſince Nature hath not diſtinguiſh'd the habitable World into Kingdoms*, is to make ſeveral Monarchs within the ſame Community. I would fain know how it can be ſhewn, upon Sir *Robert*'s grounds, that the ſeveral Polities in diſtinct Kingdoms were lawfully erected, ſince they ought all to be dependent upon One, if he be in the Right: nor can they preſcribe to a Diviſion; Anarchy, p. 273.

for there can be no Preſcription againſt the Right of the Univerſal Heir. If Uſurpation acquires a Right, poſſibly the Great Turk ſtands faireſt for it at this Day; and having gotten ſo much natural Power, all Princes not equal in Strength, ought to yield him their Crowns upon his Summons.

Patriar. p. 45. But this cannot prejudice the Right of the True Heir, though *it may hinder him in the uſe or exerciſe of his natural Rights, yet thereby no Man loſeth the Right it ſelf.*

Anarchy, p. 273 Though this Right be in One over all, yet, ſays he, *it is a Truth undeniable, that there cannot be any multitude of Men whatſoever, either great or ſmall, though gathered together from the ſeveral Corners and remoteſt Regions of the World, but that in the ſame multitude conſider'd by it ſelf, there is one amongſt them that in Nature hath Right to be King of all the reſt, as being the next Heir to* Adam, *and all the others ſubject unto him.*

That is in effect, If there were but one Multitude in the World, all would be under *Adam*'s Heir, as a natural Head; but there being ſeveral, the ſtate of the Queſtion is altered, nay, and that by *Divine Right* too, for the Scripture ſays, *God hath determined the Bounds of their Habitation,* Acts 17. 26. But admit *Adam*'s Heir who has Right to be King, reſides with any particular multitude, the Right cannot be in him and in another at the ſame time; and therefore no other Title but that of a natural deſcent from *Adam* can be good.

He intimates as if no King could ever die without ſuch Heir as the People are bound to obey; nor by the ſame reaſon could *Adam* himſelf, or they that claim in a natural deſcent from him; and conſequently the true Heir to the firſt Monarch, and no other would have the Right.

Anarchy, p. 272 Yet he grants, That *if a King could die without Heir, the Kingly Power in that caſe ſhall eſcheat to the Supream Heads and Fathers of*

Patriarc. p. 21. *Families*; or, as he explains it in his *Patriarcha*, Independent Heads, which he makes ſuch as are Heads adopted by *Princes*; but in effect grants more than any wiſe Man will contend for, *viz*, that it eſcheats to every Man within the Kingdom, Freeman and Servants; for that, by his Principles of Confuſion, Nobility, or adopted Headſhip, depends upon the Grace of the Prince, having no Foundation in Nature; and that Grace with all its Effects, determines at the

Free-holders Grand Inq. p. 39 Vid. Inf. F. 15. Death of the Prince; nay, and all former Laws too are void, till confirmed by the next Succeſſor. Wherefore Property, and all Diſtinctions not ſettled by God, or Nature, diſſolve, and then all Men are equal as to Diſtinctions brought in by Humane Laws.

This I ſuppoſe is to make way for the natural Headſhip of Fathers in a ſtrict ſenſe, and that he takes away too, and places it in the Nobility; and the Nobility expiring, what becomes of it? Why, 'tis *in nubibus*, in Abeyance, till they, who have no Right to do any Act of Power, part with the eſcheated Power by free Choice, or yielding to a Conquerour: ſpeaking of the Caſe, that the knowledg of that One in the World, who is next Heir to *Adam*, be loſt,

Patriarc. p. 21. *This Ignorance of the People*, ſays he, *being admitted, it doth not by any means follow that for want of Heirs, the Supream Power is devolv'd*

volv'd to the Multitude, and that they have Power to Rule, and chuſe what Rulers they pleaſe. No, the Kingly Power eſcheats in ſuch Caſes to the Princes, and independent Heads of Families, and every Kingdom is reſolved into thoſe Parts whereof it at firſt was made, by the uniting of great Families, or petit Kingdoms, as we find the Great Monarchies were at firſt erected, and into ſuch again as into the firſt Matter many times they return. And becauſe the dependency of Ancient Families is oft obſcure, or worn out of knowledg; therefore the Wiſdom of all, or moſt Princes, hath thought fit to adopt many times thoſe for Heads of Families, and Princes of Provinces, whoſe Merits, Abilities, or Fortunes have enabled them, or made fit or capable of ſuch Regal Favours. All ſuch prime Heads and Fathers, have Power to conſent in the uniting or transferring their Fatherly Right of Soveraign Authority on whom they pleaſe.

'Tis to be obſerved, that our worthy Knight never takes care for more than ſerving the preſent Occaſions; where he comes to ſhew, that the Houſe of Lords are not born Counſellors, nor can claim to be ſo, *ex debito Juſtitiæ*, having no Right in Nature, nor any Superiority but what depends on the Grace of the Prince; and that, as his laſt Eſſay explains it, of the immediate Prince. It was neceſſary to claw the Commons, as ſtanding fair for the Pretence of being natural Counſellors, if they can make out their Repreſentation of the People to be full and compleat. But here when he talks of Independent or Supream Heads, theſe were too big Epithets for Commoners, and therefore theſe muſt be Lords. Not conſidering that he makes them in another place ceaſe to be ſo, till their Dignity be reviv'd, which cannot be by themſelves; but it muſt be *ratified by the expreſs Conſent, or at leaſt by Sufferance of the Prince following who had knowledg thereof.* The Reaſon of which he has given in another place, for *every Law muſt always have ſome preſent known Perſon in being, whoſe Will it muſt be to make it a Law for the preſent.*

Vid. ſup. F. 14.

Power of Kings, p. 1.

Obſerv. touching Forms of Govern-ment, p. 149. *Laſt. Ed.*

If the Independent Heads, or Nobles, are, inſtead of One Prince, to make choice of an Head, which is a Law to that end; then a Law may flow from the Will of many, as well as from that of One.

But take Sir *Robert*'s Notion of Supream or Independent Heads and Fathers, in the moſt ſenſible meaning, that is, of Natural Fathers; theſe, where there is no diviſion into Tribes, as was amongſt the Jews, will be numerous. Yet all, in the Caſe preſuppos'd, are allow'd by Sir *Robert*, to be inveſted with Kingly Power; and therefore the parting with it muſt be by their choice, as he himſelf yields; and yet, according to his Principles, they can never ſo part with it, but they may reſume it.

I muſt confeſs in this, he doubly contradicts himſelf; for the End of his Writings being to prove, that the Government ought always to be in One abſolutely, here he yields it to be in many. And when before he ſaid, That *Civil Power, not only in general, is by Divine Conſtitution, but even the Aſſignment of it ſpecifically to the Eldeſt Parent*; here he acknowledges it to be in ſeveral Parents, not in the Eldeſt only.

Patriarc. p. 12.

But that every ſuch Parent as was at any time veſted with this Power, may reſume it, is the plain Inference from his Doctrine; for

Patriar. p. 94. he tells us, That *although a King do frame all his Actions to be according to the Laws, yet he is not bound thereto, but at his good Will, and for good Example; Or so far forth as the general Law of the Safety of the Common-weal doth naturally bind him; for in such sort only, positive Laws may be said to bind the King, not by being positive, but as they are naturally the best or only Means for the preservation of the Common-weal.*

Those Laws which are the best or only means for the preservation of the Common-weal, bind Princes.

Here still he opposes himself, for he yields that Princes are bound to those Laws, which are the best or only means for the preservation of the Common-weal; and so asserts that exploded Sentence, I will not call it Maxim, *Salus Populi suprema Lex:* when at other times he tells us, *That 'twas God's Ordinance that Supremacy should be unlimited in* Adam, *and as large as all the Acts of his Will; and as in him, so in all others that have Supream Power.* That is, as by Supream Power he means absolute, every one that has Absolute Power, ought to have Absolute Power. But the Consequence from *Adam*'s having had such Power, is, That the Right Heir from *Adam*, in the natural course, ought to inherit it: But as he supposes several at the same time to be Heirs, or to come into the stead of *Adam*'s right Heir, upon the Escheat of the Kingly Power, these being so many Kings, or at least making one King, (where however the Power is in many) though they parted with their Power, they might at any time resume it, when they thought it for the Good of the Publick; of which they, as Princes, should be Judges, nay, and their Heirs in Succession might. And so Sir *Robert*'s Maxim *resteth, That the Prince is not subject to his Laws, nor the Laws of his Predecessors, but well to his own just and reasonable Conventions.* Nay, though they should swear to observe all the Laws of their Kingdoms, yet *no Man can think it Reason, that Kings should be more bound by their voluntary Oaths, than common Persons are by theirs.*

Free-holders Grand Inq. p. 39
Anarchy, p. 265
No Laws whatsoever bind Princes.

Filmer's *Power of Kings*, F. 2.

Patriarc. p. 97.

I see not how upon his Principles, an Answer can be given to his Question.

Patriarc. p. 23. *If Obedience to Parents be immediately due by a natural Law, and Subjection to Princes but by mediation of an Humane Ordinance, what Reason is there that the Laws of Nature should give place to the Laws of Men, as we see the Power of the Father over his Child, gives place, and is subordinate, to the Power of the Magistrate?*

He affords no other Title to *Princes*, than what Fathers have to be *Princes*, each in his own Family; nay, he himself owns that the Kingly Power may escheat to all the Independent Fathers, and that they may transfer it over to One. Now that 'tis in this One, not still in all, or in some other, must be of Humane Ordinance. Upon which Grounds the answer to his Question is obvious; which is, that the Subjection due by Nature from Children to their Parents, is not defeated by the Kingly Power's being in One; and therefore *the Power of the Father over his Child, does not give place to the Power of the Magistrate.* If it did, this their natural Right the Parents may resume, when 'tis for the Good of their respective Families, or thought so by them, and indeed of one great Family, they might resolve the Community into as many separate Governments, as there are Families, or *Patres Familiâs*, at their Pleasures, without any moral Obligation to the contrary. If the Power whereby a Nation

is

is govern'd, were not wholly distinct from that whereby a private Family is; and if both came by Nature, since the true descent in Nature cannot now be made out, for every Family to make a Kingdom by its self, must be most natural, and the only lawful Government, unless Choice, that is, Humane Ordinance, may warrantably cement them into one Government. And this is very evident in the Case of Escheat, and of any Translation of Kingly Power from Natural Fathers: For the Kingly Power is in the Fathers before the transferring it over, *quatenus* Fathers, or it is not. If it be in them, *quatenus* Fathers, then, according to Sir *Robert*, they may resume whatever is essential to the Soveraignty of Fathers, being it was once lawfully vested in them, at least they have a great deal of Latitude for their Claim, because, *For the same Causes that a private Man may be relieved from his unjust and unreasonable Promise, as for that it was so grievous; or for that he was, by Deceit or Fraud, circumvented, or induced thereunto by Error or Force, or just Fear, or by some great Hurt; even for the same Causes, the Prince or Princes may be restored in that which toucheth the diminishing of his or their Majesty.* Power of Kings, Fol. 2. Patriarcha, p. 97.

It seems he grants that the Power once lawfully vested in any, cannot be parted with but upon choice wholly free, *ex mero motu, & voluntate spontaneâ.* Yet being there was no Obligation upon them from God, or Nature, to devolve their Power upon one rather than another, but purely what proceeded from their own wills, this if he argues rightly, they might resume when they list, at least when they all agreed to the Act of Resumption; For says he, *impossible it is in Nature, for to give a Law unto themselves, no more than it is to command a Mans self in a Matter depending of his own Will, there can be no Obligation which taketh state from the meer Will of him that promiseth the same.* Power of Kings, Fol. 1.

And thus there can be no lasting Obligation at all; for he tells us, in effect, that if there be any Circumstance which makes it not wholly spontaneous, 'tis voidable.

But if this Power was not vested in them as Fathers, then it comes not to him who has the Kingly Power as a Fatherly Power, but meerly as Kingly, contradistinct from, and superior to the Fatherly.

But how can the Supream Fathers, Nobles, or Free-holders transfer their Power? According to Sir *R. F.* it cannot be done in Nature, except every One, not the major part only, consent.

As to the Acts of the major part of a Multitude, it is true, says he, *that by politick humane Constitutions it is oft ordained, that the Voices of the most shall over-rule the rest; and such Ordinances bind, because where Men are assembled by an Humane Power, that Power that doth assemble them, can also limit and direct the manner of the execution of that Power, and by such derivative Power made known by Law, or Custom, either the greater Part, or two Thirds, or three parts of Five, or the like, have Power to oversway the Liberty of their Opposits. But in Assemblies that take their Authority from the Law of Nature, it cannot be so; for what Freedom or Liberty is due to any Man by the Law of Nature, no inferior Power can alter, limit, or diminish. No one Man, or a Multitude, can give away the natural Right of another. The Law of Nature is unchangeable, and howsoever one Man may hin-* Patr. p. 44. The major part cannot in nature bind the rest.

der another in the uſe or exerciſe of his natural Right, yet thereby no Man loſeth the Right its ſelf. For the Right, and the uſe of the Right, may be diſtinguiſhed; as Right, and Poſſeſſion are oft diſtinct. Therefore unleſs it can be proved, by the Law of Nature, that the Major, or ſome other part, have Power to over-rule the reſt of the Multitude; It muſt follow that the Acts of Multitudes not entire, are not binding to all, but only to ſuch as conſent unto them.

Hereby it appears, that it being taken for granted, that the major part, have not by the Law of Nature, Power to over-rule the reſt, it muſt follow, that where Power is veſted in ſeveral as Independent Fathers, this can never be parted with without the joint Conſent of every ſuch Father. But they muſt always be in *Mr. Hobbs* his State of War, till all the Diſſenters are reduc'd. And when ever they have natural Power, that is, ſtrength enough, they may try for it again, there being no moral Obligation to the contrary. For, what ever terms they ſubmitted to by *Deceit, Fraud, Error, Force, juſt Fear, or ſome great hurt*; If they diminiſh that Majeſty which was once in them, they may vacate the Conditions at pleaſure. And what then becomes of all Title by Conqueſt?

To ſhew wherein Sir *R.* has deceiv'd himſelf and others, would be ſuperfluous to the judiciouſly Learned, and thrown away upon them that are not ſo. But I conceive that the meaneſt Capacity may by this be ſatisfi'd, that he is guilty of many Abſurdities, and ill Aſſertions. I muſt needs ſay, by thoſe ſtrong Stroaks which in many places occur, I conclude that he was far from being deceiv'd himſelf; for he was Maſter of more Reaſon; but poſſibly he practis'd upon the vulgar Underſtandings, to try how eaſily he could make them ſwallow Contradictions. If it was not with this End, I am ſure it was with a worſe, to looſen the Bonds of Government, and make way for real *Anarchy*; ſince he attempts to weaken all other Foundations of it but his own, and yet takes away even that too. I may reaſonably hope, that for the future, no Man will juſtify him, unleſs he firſt ſhew his Principles to be conſiſtent with themſelves, and with the right of our preſent Monarchs, few of which will inſiſt upon being natural Fathers of their People, or Heirs of ſuch Fathers, or Uſurpers of the Right of ſuch Fathers, and Sir *Robert* acquaints us with no other Title.

The natural intendment, at leaſt the conſequence of all his Writings, is, when rightly conſider'd, to encourage Rebellion, and dethrone Lawful Kings, upon pretence of natural Right, and a ſuppoſititious *Patriarchal* Power; to degrade the Eccleſiaſtical and Temporal Peers, and herd them amongſt the Commons, upon the Suppoſition, that the Power of the Houſe of Commons may *be founded on the Principles of Nature: But that the Houſe of Peers do not, nor cannot make any ſuch pretence, ſince,* as he ſays, *there is no reaſon in Nature, why amongſt a company of Men who are all equal, ſome few ſhould be pluck'd out to be exalted above their Fellows, and have Power to govern thoſe who by Nature are their Companions. The difference between a Peer and a Commoner is not by Nature, but by the Grace of the Prince.*

Free-holders Grand-Inqueſt, p. 38.

And

And this Grace giving no Right, but during the Life of that Prince, upon his Death all Arch-Biſhops, Biſhops, Earls, Barons, dignify'd Clergy, and others, loſe their Honours, Preferments, and whatſoever they deriv'd from the Grace of that Prince, or of his Progenitors, all falls into *Anarchy* and Confuſion, and all are equal in Dignity; nor have they any Power to alter that equality, unleſs every individual *Plebean* (for ſo they all become now) freely conſent.

For, as he teaches, *the Laws, Ordinances, Letters Patents, Priviledges and Grants of Princes have no force but during their Life, if they be not ratified by the expreſs Conſent, or at leaſt by the Sufferance of the Prince following, who had knowledg thereof.* Power of Kings p. 1.

If this be good Doctrine, all thoſe Lands and Poſſeſſions which the Piety and Devotion of former Princes dedicated to the Church, are in a very unſettled condition. For that, any ſucceeding Prince may, without Injuſtice take them back, they being as much in him, as they were in any of his Progenitors, before they were granted out. The Conſequence of this, me-thinks, ſhould alarm a Party beſt able, if they liſt to expoſe him. However, I hope the abhorrence of ſuch Principles, ſo contrary to the Glory of the Prince, and Honour of his Peers, not to mention the Rights of Inferior Subjects, will draw on them a publick Cenſure; at leaſt that ſome Man of Learning, whoſe Name may give Authority to the Truths he patronizes, will more fully convince the unbelieving World of the Danger to the Government from ſuch *Goliahs* defying the Armies of our *Iſrael.* This Champion, like that of the *Philiſtins*, I conceive I have laid proſtrate with a Pebble-ſtone, a ſlight Weapon from a weak Hand, and cut off the Head of his Argument with his own Sword. *This done ſince by the Author of the two Treatiſes above cited, and by the Author of* Patriarcha non Monarcha.

In his *Patriarcha* he profeſſes that he is *not to queſtion or quarrel at the Rights or Liberties of this or any other Nation*; his *Task*, he ſays, *is chiefly, to enquire from whom theſe firſt came, not to diſpute what or how many theſe are:* But beſides his other Contradictions, it may well be doubted whether in this he is reconcilable with himſelf in other places, or with the Foundation of all his Diſcourſes, which lies thus. Patriarc. p. 6.

It was God's Ordinance that Supremacy ſhould be unlimited in Adam; *and as large as all the Acts of his Will; and as in him, ſo in all others that have Supream Power,* in whatſoever manner they enjoy it. Or take it in other words, moſt of them his own. Anarc. p. 245.

Adam *was the Father, King and Lord over his Family, a Son, a Subject, and a Servant or Slave, were one and the ſame thing at firſt.* Preface to Obſ. touching Forms of Government.

But all Monarchs, one way or other, ſucceed to *Adam*'s Power; therefore a Monarch, Son, Subject, and Servant, or Slave, are, as to Right, *one and the ſame thing now.* And then, what Rights or Liberties are there in this, or any Nation, diſtinct from what he ſuppoſes to be inherent in the Perſon of one?

But that I may be ſure to pleaſe at the end, I ſhall conclude with Sir *R*'s own words; *Thus have I picked out the Flowers out of his Doctrine about Monarchy, and preſented them with ſome brief Annotations: It were a tedious work to collect all the learned Contradictions, and ambiguous Expreſſions that occur, in every Page of his Platonick Monarchy.* Anarc. p. 293.

The PROVISIONS at Oxford.

42 Hen. 3.

Vid. cap. 6. F. 47. Anales Monaſt. Burton, F. 411.

FUerunt etiam in eodem Parliamento apud Oxoniam xxiv. electi, videlicet xii. ex parte Domini Regis, & totidem ex parte Communitatis, quorum ordinationibus & proviſionibus Dominus Rex & Dominus Edwardus Filius ejus, ſicut ſuperius prænotatur, ſe ſuppoſuerunt, ſuper ſtatûs eorundem & totius Regni Angliæ correctione, & in melius reformatione. Plura etiam fuerunt ibidem & alibi percuſſa quæ inferius continentur.

Proviſio facta apud Oxoniam.

Proviſum eſt, quod de quolibet Comitatu eligantur quatuor diſcreti & legales Milites, qui quolibet die ubi tenetur Comitatus, conveniant ad audiendum omnes querelas de quibuſcunq; tranſgreſſionibus & injuriis, quibuſcunq; perſonis illatis per Vicecomites, Ballivos ſeu quoſcumq; alios, & ad faciendum tachiamenta quæ ad dictas quærelas pertinent, uſq; ad primum adventum Capitalis Juſticiarii in partes illas. Ita quod ſufficientes capiant plegios à conquerente de proſequendo, & ſimiliter ab eo quo queritur veniendo, & juri parendo coram præfato Juſticiario in primo adventu ſuo. Et quod prædicti quatuor Milites irrotulari faciant omnes prædictas querelas cum ſuis attachiamentis ordinate & ſerie, ſcilicet de quolibet hundredo ſeperatim & per ſe. Ita quod præfatus Juſticiarius in primo adventu ſuo poſſit audire, & terminare præfatas quærelas ſigillatim de quolibet hundredo. Et ſcire faciant Vicecomiti quod venire faciat coram præfato Juſticiario in proximo adventu ſuo ad dies & loco quæ eis ſcire faciat, omnes hundredarios & ballivos ſuos. Ita quod quilibet hundredarius venire faciat omnes conquerentes & defendentes de balliva ſua, ſucceſſive ſecundum quod præfatus Juſticiarius duxerit de prædicto hundredo placitare. Et tot & tales tam Milites quam alios liberos, & legales homines de Balliva ſua per quos rei veritas melius convinci poterit; ita quod omnes ſimul & ſemel non vexentur, ſed tot veniant quod poſſunt una die placitari & terminari.

Idem proviſum eſt quod nullus Miles de prædictis Comitatibus, occaſione quietanciæ quod non ponatur in Juratis vel aſſiſis per Chartam Domini Regis deferatur, nec quietus ſit quoad proviſionem iſtam ſic factam pro communi utilitate totius Regni.

Electi ex parte Domini Regis.

Dominus Londonienſis Epiſcopus, Dominus Wintonienſis Electus, Dominus H. Filius Regis Almaniæ, Dominus J. Comes Warennæ, Dominus Guido de Lyſinan, Dominus W. de Valentia, Dominus J. Comes Warewici, Dominus Johannes Manſell, Fr. J. de Derlington. Abbas Weſtmonaſterii, Dominus H. de Wengham.

Electi

Electi ex parte Comitum & Baronum.

Dominus Wigornenſis Epiſcopus, Dominus Symon Comes Lyceſtrenſis, Dominus Richardus Comes Gloverniæ, Dominus Humfridus Comes Heref. Dominus Rogerus Mariſcallus, Dominus Rogerus de Mortuo Mari, Dominus J. Filius Galfridi, Dominus Hugo le Bigot, Dominus Richardus de Gray, Dominus W. Bardulf, Dominus P. de Monteforti, Dominus Hugo Diſpenſarius.

Et ſi contigat aliquem iſtorum neceſſitate intereſſe non poſſe, reliqui iſtorum eligant quem voluerint, ſcilicet alium neceſſarium loco abſentis ad iſtud negotium proſequendum.

Ceo jura le Commun de Angletere à Oxenford.

Nus tels & tels feſum à ſaver à tute gentz, ke nus avum jure ſur Seintes Evangeles, è ſumus tenuz enſemble par tel ſerment, è premettuns en bonne fei, ke cheſcun de nus è tuz enſemble nus entre eiderums, è nus è les nos cuntre tute genz, dreit feſante en rens pernant, ke nus ne purrum ſanz mef fere, ſalve la fei le Rei, è de la corune. E premettuns ſur meime le ſerment, ke nus de nus ren ne prendra, de tere, ne de moeble, par que ceſt ſerment purra eſtre deſturbe, u en nule ren Empyre. E ſi nul fet en contre ceo, nus le tendrums à Enemi mortel.

Ceo eſt le ſerment à vint è quatre.

Cheſcun jura ſur ſeintes Evuangeles, ke il al honur de Deu, è à la fei le Rei, è al profit de Reaume, ordenera è tretera ovekes les avant dit jurres, ſur le reſurmement è le amendement del Reaume. E ke ne lerra pur dun, ne pur premeſſe, pur amur, ne pur hange, ne pur pour de nulli, ne pur gain, ne pur perte, ke leaument ne face ſolum la tenur de la lettre ke le Rei ad ſur ceo don, et ſua fez euſement.

Ceo jura le haute Juſtice de Engletere. Il jure ke ben & leaument, a ſun poer, fra ceo ke apent a la juſticerie de dreiture tenir à tute gentz, al prou le Rey è del Reaume, ſolum la purveance fete & a fere par les vint & quatre, & par le cunſeil le Rei è les hauz humes de la tere, ke li jurrunt en ceſtes choſes à aider & à maintenir.

Ceo jure le Chanceler de Englettere.

Ke il ne enſelera nul bref, fors bref de curs, ſanz le commandement le Rei & de ſun Cunſeil ke ſerra preſent. Ne enſelera ren ke ſeit encontre le ordinement ke eſt fet & ſerra à fere par les vint & quatre, u par la greinure partie. Ne ke il ne prendra nul loer autrement ke il nèſt diviſe as autres. E lem li bandra un companiun en la furme ke le Cunſeil purverra.

Ceo eſt le ſerment ke les Gardens des Chaſtles firent. Ke il les Chaſtles le Rei leaument è en bone fei garderunt, al oes le Rei, & de ſes heyrs. E ke eus les rendrunt al Rei u à ſes heyrs, & à nul autre, & par ſun cunſeil, è en nul autre manere; Ceo eſt a ſavere par prodes

homes de la terre eſluz a ſun Cunſeil, u par la greinture partie. E ceſt furme par eſcrit dure deske à duze ans. E de elokes en avant per ceſt eſtablement, & ceſt ſerment, ne ſeint conſtreint ke franchement ne les puſſent rendre al Rei à ſe heirs.

Ceo ſunt ceus ke ſunt jurez del conſeil le Rei.

Archiepiſcopus Cantuarienſis, Epiſcopus Wigornenſis, Comes Glovernenſis, Comes Mareſcallus, Petrus de Sabaudia, Comes Albermarlie, Comes Warewick, Comes Herefordenſis, Johannes Manſel, Johannes filius Galfridi, Petrus de Monteforti, Richardus de Gray, Rogerus de Mortuo-Mari, Jacobus de Aldithelege.

Les duze de par le Rei unt eſlu des duze de par le commun. } le Cunte Roger le Mareſcall. Hugo de Bigot.

E la partie ver le Commun ad eſlu des xii. ke ſunt de part le Rei. } le Cunte de Warewik Johannes Manſell.

E ces quatre vint poer à eſlire le cunſeil le Rei, & quant il un eſlu, il les muſtrunt as vint & quatre & la u la greinture partie de ſes aſſent, è ſeit tenu.

Ces ſunt les duze ke ſunt eſlu par les Baruns a treter *a treis Parlementz* par an, oveke le cunſeil le Rei, pur tut le commun de la terre de commun boſoine.

Epiſcopus Londonienſis,	Ægidius de Argenten,
Comes Herefordenſis,	Comes Wintonienſis,
Johannes de Bailol,	Philippus Baſſet,
Johannes de Gray,	Johannes de Verdun,
Rogerus de Sumery,	Rogerus de Monte alto,
Hugo diſpenſarius,	Thomas de Greſly.

Ces ſunt les vint & quatre ke ſunt mis per le Commun à treter de aide le Rei.

Epiſcopus Wigornenſis,	Johannes de Gray,
Epiſcopus Londonienſis,	Johannes de Bailol,
Epiſcopus Sarum,	Rogerus de Mortuomari,
Comes Leyceſtrenſis,	Rogerus de Monte alto,
Comes Glovernenſis,	Rogerus de Sumery,
Comes Mareſcallus,	Petrus de Monteforti,
Petrus de Sabaudia,	Thomas de Greſley,
Comes Herefordenſis,	Fulco de Kerdiſton,
Comes Albemarlie,	Ægidius de Argenton,
Comes Wintonienſis,	Johannes Tyriel,
Comes Oxonienſis,	Philippus Baſſet,
Johannis filius Galfridi,	Ægidius de Erdinton.

E ſi aukun de ces ne i puſſe eſtre u ne voile, à ces kel i ſerrunt à peut poer de autre eſlire en ſun lieu.

Del eſtat de ſeint Egliſe.

A remembrer fet ke le eſtat le Seint Egliſe ſeit amende, par les vint & quatre eſluz à refurmer le eſtat del Reaume de Angleterre, kant il verrunt liu, & tens ſolum le poer ke il en unt par la Letter le Rei de Engletere.

De la haute Juſtice.

Derichef ke Juſtice ſeit un u deus, & quel poer il avera, *& ke il ne ſeit fors un an.* Iſſi ke al chef del an reſpoine devant le Rei & ſun cunſeil, de ſun tens, & devant celui ke ſerra apres lui.

Del Treſorer, è de le Eſchecker.

Autel del Treſorer. Mes ke il rende acunte del chef del an. E bone gens autres ſeient mis al Eſcheker ſolum le ordenement les avant dit vint & quatre. E la vengent totes les iſſues de la tere, & en nule part ailurs. E ceo ke lem verra à amender, ſeit amende.

Del Chanceller.

Autel del Chanceler. Iſſi ke al chef del an reſpoin de ſun tens. E ke il ne enſele hors de curs, *par la ſule volunt del Rei.* Mes le face par le Cunſeil ke ſerra entur le Rei.

Del poer la Juſtice, & de Bailives.

La haute Juſtice à poer de amender les tors fez de tutes autres Juſtices, & de Ballifs, è de Cuntes, & de Baruns, & de tutes autres gentz, ſolum lei & dreit de la tere, è en leus deues. E ke la Juſtice ne prenge ren, ſi ne ſeit preſent de pain & de vin, è de teles choſes, ceo eſt a ſaver, viandes & beyfres ſicum lem ad eſte acuſtume à porter as tables de prodes homes à la Jornee. E ceſte meime choſe ſeit entendue de tuz les Cunſeleirs la Rei, & de tuz ſes Ballifs. E que nul Ballif par acheſun de plai, u de ſun office, ne prenge nul loer par ſa main, ne par autre en nule manere. E ſi il eſt ateint, ke il ſeit reint, & cil ke done autre ſi. E ſi covent ke le Rei done à ſa Juſtice & à ſa gent ke le ſervent, ke il ne eient meſter ke il ren prengent de autrui.

De Veſcuntes.

Les Veſcuntes ſeint purveus per leus gentz & prodes homes, & tere tenanz. Iſſi ke en chelcun Cunte ſeit un Vavaſur del Cunte memes Veſcunte, ke ben & lenement trete la gent del Cunte & dreitement. E ke il ne prenge loer, è ke il ne ſeit Veſcunte fors un an enſemble. E ke en le an rende ſes acuntes al Echeker, è reſpoine de ſun tens. E ke le Rei lui face del ſoen ſolum ſun afferant, coment il puſſe garder

le Cunte drietement. E ke il ne prenge nul loer, ne li ne ſes Ballifs. E ſi ils ſeint atteint, ſeint reintz.

A remember fet ke lem mette tel amendement à la Gynerie, & as gardeins de la Gynerie, ke lem y ſavue le ſerement.

De Eſchaeturs.

Bons Eſchaeturs ſeint mis. E ke il ne prengent rens des bens as morts, de queles teres deivent eſtre en la main le Rei. Mes ke les Eſchaeturs eient franche adminiſtration des bens des ke il averunt fet le gre le Rei, ſi dette lui deivent. E ceo ſolum la furme de la Chartre de franchiſe. E ke lem enquerge des tors fez ke Eſchaeturs unt fet la en arere, & ſeit amende de ſel & de tel. Ne tailage ne autre choſe ne prenge, fors ſi come il devera ſolum la Charte de franchiſe.

La Chartre de franchiſe de ſeit garde fermement.

Del Eſchange de Lundres.

A Remember fet del Eſchange de Lundres amender, & de la Cite de Lundres, & de totes les autres Citees le Rei, ke à hunte & à deſtrucciuns ſunt alez par tailages, & autres oppreſſions.

De Hoſpitio Regis & Reginæ.

A Remember fet del hoſtel le Rei & la Regine amender.

Des Parlementz quanz ſerrunt tenuz per an, & coment.

Il fet à Remember ke les xxiv. unt ordenne ke *treis Parlemenz* ſeint par an. Le premer as utaves de Sein Michel. Le ſecund le demain de la Chandelur. Le terz le premer Jor de Jun, Ceo eſt à ſaver, treis ſemaines devant le Seint John. A ces treis Parlemenz vendrunt les Cunſeilers le Rei eſluz tut ne ſeint il pas mandez, pur ver le eſtat del Reaume, & pur treter les communs beſoingnes del Reaume, quant meſter Serra, per le mandement le Rei.

Si fiet a remembrer ke le Commun eſliſe xii prodes homes ke vendrunt as Parlementz, & autre fez quant meſter ſerra, quant Rei u ſun Cunſeil les mandera, pur terter de beſoingnes *le Rei*, & *del Reaume*. E ke le commun tendra pur eſtable ce ke ces xii frunt. E ceo ſerra fet *pur eſparnier le cuſt del Commun*.

Quinze ſerrunt nomez par ces quatre, ceo eſt a ſaver, per le *Cunt le Mareſchall*, le *Cunte de Warewick*, *Hugo le Bigot*, & *John Manſell*, ke ſunt eſlus par les xxiv pur nomer les devant dit quinze, les queus ſerrunt de Cunſeil le Rei. E ſerrunt cunfermz per les avantdit xxiv, u per le greinture partie de els. E averunt poer del Rei conſeiler en bone ley, del government del Reaume, & de totes choſes qe al *Rei* u al *Reaume* pertinent. E pur amender & adreſer totes le choſes ke ill verrunt ke facent à adreſer & amender. E ſur le haute Juſtice, & ſur totes autres gentz. E ſil ne poent tuz eſtre, ceo ke le greinture partie fra ſerra ferm & eſtable.

Ces ſunt les nuns des Cheveteins Chaſteans le Rei, & de ceus ke les unt en garde.

Robertus de Nevil,	}	Bamburg, Novum Caſtrum ſuper Tyne.
Gilbertus de Gant,		Scardeburg,
Willielmus Bardulf,		Notingham,
Radulfus Baſſet de Sapercote,		Norhampton,
Hugo Bigot,		Turris Londoniarum,
Richardus de Grey,		Doveria,
Nicholaus de Monles,		Rouceſtria & Cantuaria, Wintonia,
Rogerus de Stamford,		Porceſtria,
Stephanus Longe Eſpee,		Corf,
Mattheus de Beſill,		Glouceſtria,
Henricus de Tracy,		Exonia,
Richardus de Rochele,		Haldeſham.
Johannes de Gray,		Herefordia,
Robertus Walrant,		Sarum,
Hugo diſpenſarius,		Horeſtan,
Petrus de Monteforti,		Brugewater,
Comes Warewik,		Diviſes,
Johannes filius Bernardi,		Oxonia.

N. III. *Vid. CAP. 6. F. 56.*

ILLO tempore voce præconariâ proclamatum fuit per Angliam, ut poſſeſſores Lanarum exponerent ipſas venditioni infra menſem, in civit. aſſig. alioqui tanquam forisfactura cederent ipſi Regi. Quæ quidem in die Sancti Greg. quaſi modo prælocuto callidè congregatæ, pro forisfactura Regis in Flandriam ſunt tranſvectæ. His & aliis extorſionibus turbati Comites & Barones Angliæ Parliamentum ſuum per ſe in Foreſtâ de Wyre quæ eſt in Marchiâ ſtatuerunt, &c. Mat. Weſt. F. 430. An. 1297.

Tenes locum Theſ. & Baron. de Scaccario miſerunt Domino Regi quaſdam litteras dicti Scaccii in hec verba Sire! que ceſt joel prochein devant le feſt de Seint Bartholomew, à hours de 3ⁿᵗ, vienner à voſtre Eſchequer à la bar le *Conte Mareſchal* & le *Conte de Hereford*, &c. & pluſours autres *Baneres* & *Bachelers*, & le *Count de Hereford*, dit que il fuit charge à dire de per le *Conte de Mareſchal* & les auters, que illonq; fuer. & per toutle *Cominalte* du Royalme, auxibien *Clers*, come *Lais*, que de deux choſes ſe ſentierent eux e le *Commonaute* greéves, lau d'aſcun greévantes dont il aveyent fait monſtrer les Articles à vous, coma lour *Liege Snr.* Et l'auter que il entendirent que fuit fait per nous del 'Eſchequer ſans veſtre ſen, come endroit Memd. in Scio. 25 E. 1. F. 39. *Printed with the Year Book of* E. 2.

droit del utyme lever, & des leins prender, & dïont q'en les breves que ſont iſſues per lev. le utyme eſt contean que *Countes, Barons, Chivaliers & la Commonaute* del dit Royalme unt grant le utyme, Si come eux & lour Anceſters ont fait ce à en arrier, la ou le dit utyme per eauz ne per la dite unques ne fuit grant: & dit ouſter, que nul choſe ne niet plu tot home enſervage que rechat de Sans è eſtre taille a volunt: & que ſi le utyme fueuſt iſſi levee, ce turnereit à diſheriſon de eaux, è de lour Heirs, Et dit apertment à touts les autres apres, que tiel taillage, & pris de leynes *ne fuer my ſufferables, ne ſuffreint en nul manere.* Et nous preerent, que ceſtes choſes ſeiſſons redreſſer à tant, *ſeu partirent ſans nul reſpons attender.* Et pur ce ſire! nous voiles mander veſtre volount ſi vous pleſt ſur ce choſe, &c. Iſta litera miſſa fuit per *Rob. Divelyn* Hoſtiar de ſcio ad præd. horam nonam.

Poſtea Dominus Rex Reſcripſit voluntatem ſuam, &c. Nous avoins entender, comment les 2 Countees viender à Eſchequer ove lour company, etles choſes auxi que ils ont dit, &c. quant à ce que il ne ſuffreint en nul manere de lever le utime, ne de fair la priſe: Nous voil' que vous ne laiſſes my pur ce que vous n'alles avant ataxer; mes per ce que il diſeyent, que la leve turner in diſheritance, &c. faits ſcaver & tries per my les Contes en la taxation d'utimes ſe doit fair, que ſi y ad nul que deubter de tiel prejudice ou diſheriſon, que le Roy le quitter per ſes Letters coverts, que la taxation, ne la leve, ne poit turner en ſervage de nuly, ne eſſe tret en uſage en temps avenir. Mes que le Rey ſe puiſſe eyder ore pur ſon grant buſoin, que eſt ſi haſtif. pur la Salvation de luy è d'eux meſmes, & de tut le Reaume, & pur allegier l'un des eaux miſcheifs duont il unt eſte charges ja grant piete. Et voit que *Chanchellor* fra Letters, &c. Pur ceux que doubta, &c. Et quant à la priſe de leynes, voloit que l'Ordinans que ent ſe feynt ſe teigne, è dit ſoit pur tut, auxi pur vous, come pur ceux que ſe intromitterent, que le Roy ne voit rien prender mes per achat, feſant gree. Et que en aves auter foits à demand aviſement ſur ceſt beſoin, ou auter que ſoit haſtif vous eſcries ſavoir à noſtre fitz & à ſon Counſel que aura pres luy, & eux mitter ont tien Counſel come ils verront. Done a *Winchelſey* ſous noſtre Privy Seale.

Bundel Brev. de Priv. Sigillo in Turri Lond. An. 25. E. 1. & Pat. 26. E. 1.

Come le Roy avant ſon paſſage vers Flandre, euſt volunte è deſire de fair redreſſer & amender les Grievances faits à ſon People, en noun de luy e ſur ceo envoiaſt ſes Letters par tutez les Contes d'Engleterre, pur ceſt choſe metter en effect: ordine eſt par luy è par ſon *Counſeil*, que en Cheſcun Conte ſoient aſſignez quatre, ceſt ſavoir deus *Chevalers*, des queux le un ſerra mis par luy, è lautre ſerra pris du Conte, un *Clerke*, un *home de Religion*, que ſeint bons, è leaux è bien aviſes pur enquirer de touts manners de grievances, come des choſes priſes hors de *Seint Eſgliſe*, des priſes de Leynes, Peaus, Quirs, Bles, Beſtes, Charz, Piſſons, è de totes autres maneres de choſes par mi le Royalme, de *Clers*, & *de Lays, puis la Guerre comotie entre le Roy de France è luy*; fuſt ce *pur Garde de la Mer*, ou *en autre manere.* Enquiront meſms ceaus per qui, è as queuz, è de quoie, è de combien, è de value, è coment, è en quen manere ices priſes, è grevances fuerent faites au pueple. E ceus aſignes eient plein power, de enquirer, oir, & terminer, auſi bien par office, come à ſuit de partie. E quant la verite de ces choſes ſerra ateinte, le quel que ces ſeit par garant,

garant, ou ſans garant, ce que ſerra pris ſans garant ſeit retorne à ceus que le damage ont receu, ſi le tortz feſantz eient de quoi, è outre ceo puni pur le treſpas. Et ſil nient de quoi, ceaus as queaus les garantz è commiſſions ſont venus, come Viſcontes, Clerks aſſigns, Baillifs, & autres tiels maneres de Miniſtres, reſpoignent pur lour fourmis que averent fait tels priſes. *E que de ce que ſerra trove pris par garant, le Roy ſerra certifiez, e en fra tant que il ſe tendront apaiz par reſon.*

N. IV. *Vid. CAP. 7. F. 65.*

QUID loquar de Odone Baiocaſino Præſule, qui CONSUL PALATINUS erat,& ubiq; cunctis Angliæ habitatoribus formidabilis erat, ac veluti ſecundus Rex paſſim jura dabat: Principatum ſuper omnes Comites & Regni Optimates habuit, & cum Theſauris Antiquorum Cantiam poſſedit, in quâ Jamdudum Edelbertus Irminrici Filius, Eadbald, & Ercombertus, & Egbert, atq; Lotheris Frater ejus regnaverunt. Ordericus Vitalis. *F.* 522.

Odo, ut ſupra dictum, eſt *Palatinus* Cantiæ Conſul erat, & plures ſub ſe Comites, viroſq; potentes habebat. Ibid. *F.* 666.

Sigibert calls him in one place, *Juſticiarus & Princeps totius Angliæ:* In another, he ſhews that *Odo* had been here in the *Confeſſor*'s Time; and it is not improbable that he was made Earl of *Kent* by the *Confeſſor*, Earl *Godwin* and his Sons being forced to yield up the Services of their Knights to the King, after which they were baniſhed. But returning again, they came to Terms with the King; one of which was, That the *Normans* ſhould be baniſhed. *Sigebert* ſpeaking of the Reign of the *Confeſſor*, ſays, Sigeberti Monachi Gemblatenſis Chronicon. Malmsbury, *F.* 56. Servitium Militum per Angliam Bromton, *An.* 1052. *F.* 944.

Et *Odonem* CONSULEM & omnes Francos Godwinus & Filii ſui arte ſua ab Angliâ exulaverunt.

N. V. *Vid. CAP. 7. F. 66.*

WHereas Records of the *Tower* ſhew the *Chamberlain*'s Office to belong to the *Barony* of the Earl of *Oxford*; it ſeems it was ſo anciently, that at the Coronation of *Richard the Second*, the Counſel of *Robert de Vere* adviſed him to lay his Claim to it in Preſcription. Accordingly in his Claim before the *High Steward*, he ſays,

Ses Anceſters ont eſtre Chamberlains des Nobles Progenitors noſtre dict Snr' Roy puis temps de memory. Sir John Cotton's *Library, formerly Sir* Roberts Tit. Tiberius, *N.* 8.

This may ſeem to be an ill laying of Preſcription, as within time of memory; but it is to be obſerv'd, that in thoſe early days, by *Puis* they meant from the beginning of time of Preſcription.

8 E. 2. ed per Dominum Maynard. F. 271.

Accordingly in the Year-Book of *E.* 2. I find it pleaded; Nous avoiens eſte ſeiſe PUIS TEMPS de memorie continuelment, & vous ne poits my prendre iſſue ſur la charter fait avant temps de memorie, come puis, & demandons jugement.

N. VI. *Vid. ſup. CAP. 7. F. 69.*

Part of the Modus tenendi Parl.

CUM Dubitatio, vel Caſus difficilis, pacis vel guerre, emergat in Regno, vel extra, referatur & excutetur caſus ille in ſcriptis, *in pleno Parliamento* & tractetur, & diſputetur ibidem, inter *pares Parliamenti.* Et ſi neceſſe ſit injungatur per Regem, ſeu ex parte Regis ſi Rex non interſit, *cuilibet graduum Parium,* quod quilibet gradus ſedeat per ſe, & liberetur Caſus ille Clerico ſuo in ſcriptis, & in dicto loco recitari faciant coram eis Caſum illum, ita quod ipſi conſiderent inter ſe, qualiter melius & juſtius procedi poterit in Caſu illo, ſicut ipſi, *pro perſona Regis, & eorum propriis perſonis,* & etiam *propriis perſonis ipſorum quorum perſonas ipſi repreſentant,* velint coram Deo reſpondere: & ſuas reſponſiones & aviſamenta reportent in Scriptis, ut omnibus eorum reſponſionibus, conſiliis, & aviſamentis, hinc inde auditis, ſecundum melius & ſalubrius conſilium procedatur; Et ubi ſaltem major pars *Parliamenti* concordat. At ſi per diſcordiam, inter Regem, & alios Magnates, vel forte inter ipſos Magnates, pax Regni infirmetur, vel populus, vel patria, ita quod videtur *Regi, & ejus conſilio,* quod expediens ſit quod negotium illud tractetur, & emendetur, per conſiderationem omnium parium Regni ſui, vel ſi per guerram Rex & Regnum turbulentur, vel ſi Caſus difficilis coram Cancellario Angliæ emergat, ſeu judicium difficile coram Juſticiariis fuerit reddendum, & hujuſmodi, & ſi forte in hujuſmodi deliberationibus omnes, vel ſaltem major pars concordare non valeant, tunc *Comes Seneſcallus, Comes Conſtabularius, & Comes Mareſcallus,* vel duo illorum eligent viginti & quinq; perſonas *de omnibus paribus Regni,* ſcilicet duos *Epiſcopos,* & tres *Procuratores* pro *Clero,* duos *Comites,* & tres *Barones,* quinq; *Milites Comitatuum,* quinq; *Cives,* & quinq; *Burgenſes,* qui faciunt viginti quinque: Et illi viginti quinq; poſſunt eligere ex ſeipſis duodecim, & condeſcendere in eis, & ipſi duodecim ſex, & condeſcendere in eis, & ipſi ſex ad tres, & condeſcendere in eis, & illi tres in paucioribus ſe condeſcendere non poſſunt, niſi optentâ licentiâ à Domino Rege. Et ſi Rex conſenceat ipſis tres poſſunt in duos, & de illis duobus aliter poterit in alium deſcendere. Et ita demum ſtabit ſua ordinatio ſuper *totum Parliamentum,* & ita condeſcendendo à viginti quinq; perſonis uſq; unam ſolam perſonam, niſi numerus major concordare valeat, & ordinare; tandem una perſona, ut eſt dictum, pro omnibus ordinabit, quòd cum ſeipsâ diſcordare non poteſt. Salvo

Domino

Domino Regi & ejus Conſilio, quod ipſi hujuſmodi ordinationes poſtquam Scriptæ fuerint examinare & emendare valeant, ſi hoc facere ſciant, & velint: Ita quod *hoc faciant ibidem, tunc, in pleno Parliamento, & de conſenſu Parliamenti & non retro Parliamentum.*

N. VII. *Vid. CAP. 7. F. 70.*

Sir John Cotton's *Library*, Tit. Tiberius. n. 8, De Officio Seneſchalliæ.

Seneſchallia Angliæ pertinet ad *Comitem Leiceſter.* & pertinet ab Antiquo. Et ſciendum eſt, quod ejus officium eſt ſupervidere & regulare *ſub Rege,* & *immediate poſt Regem totum Regnum Angliæ,* & omnes miniſtros legum infra idem Regnum, temporibus pacis, & guerræ, &c. Item officium Seneſchalliæ eſt, quod ſi *Rex habeat malos Conſiliarios* circa eum, qui ſibi dant Conſilia ad faciend. talia quæ ſunt apta & prona ad dedecus ſuum, aut *exhæredationem ſuam,* & ad publicum malum, & deſtructionem populi ſui, tunc *Seneſchallus Angliæ aſſumpto ſecum Conſtabulario,* & aliis Magnatibus, & aliis de *Communitate* Regni Angliæ, mittent ad hujuſmodi Conſiliarium Regis, quod ipſum Regem ita ducere & conſulere, & deſiſtat de hujuſmodi malis conſiliis prius Regi factis mentionem faciend. Quod ab eo & ejus preſentiâ recedat, & moram cum eo, quod dedecus ſuum & damnum publicum ut predictum eſt, non faciat. Quod ſi vero faciat, tum mittent ad Regem, quod ipſum ab eo amoveri faciat, & ejus conſilium non audiat, pro eo quod *à toto populo malus Conſiliarius inter Regem & ſuum Populum præſumitur.* Quod ſi Rex non fecerit, aliâs & pluries mittent tam Regi, quam ei. Quod ſi demum non Rex nec hujuſmodi Conſiliarius de hujuſmodi miſſionibus, & ſupplicationibus advertat, ſed ea potius facere neglexerit; tum, *pro bono publico licebit Seneſchallo & Conſtabulario* Angliæ, Magnatibus, & *aliis de Communitate Regni,* capere, & corpus ejus ſalvum cuſtodire, *uſque ad proximum Parliamentum,* & ſeiſire res, redditus, & omnes poſſeſſiones ſuas, donec judicium ſuum attenderit, & ſubierit, *per conſiderationem iſtius rni in Parliamento.*

N. VIII. *Vid. CAP. 7. F. 72.*

JOhannes Dei gratiâ, &c. ſciatis nos conceſſiſſe, & preſenti cartâ noſtrâ confirmaſſe, dilecto & fideli noſtro *Willielmo Mareſcallo,* Comiti Pembroke, & hæredibus ſuis Magiſtratum *Mareſcalciæ Curiæ noſtræ;* quem Magiſtratum *Gilbertus Mareſcallus* H. Rs. avi patris noſtri, & Johannes filius ipſius Gilberti, diſrationaverunt coram præd. Rege H. *in Curiâ ſuâ,* contra Rob. de *Venoiz,* & contra Willielmum de *Haſtings,* qui ipſum Magiſtratum calumpniabantur. Et hoc judicium, quia defecerunt ſe de recto ad diem quem eis inde

conſtituerat. Quare volumus, & firmiter precipimus, quod predictus *Willielmus, & heredes ſui* poſt eum, habeant & teneant pred. Magiſtratum, cum omnibus ad illum pertinen. bene, & in pace, liberè, & quietè, integrè, & honorificè, de nobis & heredibus Teſtibus W. Lond. E. Elyens. & H. Sarum. Ep. Dat. per manus H. Cant. Arch.

N. IX. *Vid. CAP. 9. F. 93.*

Rot. Parl. 1. H. 7. Preſentatio Prælocutoris.

SUbſequenterq; idem dominus Rex prefatis communibus ore ſuo proprio eloquens, oſtendendo ſuum adventum ad jus & Coronam Angliæ fore, *tam per juſtum titulum hæreditanciæ, quam per verum Dei Judicium, in tribuendo ſibi victoriam de inimico ſuo in* Campo, declaravit quod omnes ſubditi ſui cujuſcunq; ſtatûs, gradûs ſeu conditionis fuerint & haberent & tenerent ſibi & hæredibus ſuis, omnia terras, tenementa, redditus, & hæreditamenta ſua, eiſdemq; gauderent, exceptis talibus perſonis quales ſuam Majeſtatem Regiam oſtenderunt, qui juxta eorum demerita in *preſentis Parliamenti Curiâ* aliter eſſent plectendi.

Titulus Regis.

Item. Quædam Billa exhibita fuit præfato Domino Regi in præſenti Parliamento, per Communitates Regni Angliæ in eodem Parliamento exiſtentes, hanc ſeriem verborum continens.

To the Pleaſure of Almighty God, the Wealth, Proſperity, and Suertie of this Realm of England, to the ſingular comforth of all the King's Subjects of the ſame, and in avoiding of all Ambiguities and Queſtions. Be it ordeigned, Stablished, and Enacted, by Auctoritee of this preſent Parliament, that the Inheritance of the Crounes of the Realmes of England, and of France, with all the preeminence and dignitie Roiall to the ſame pertaining, and all other Signeries to the King belonging beyond the See, with th' Appurtenaunces thereto in eny wiſe due or perteineing, be, reſt, remaine and abide in the mooſt Roiall Perſonn of oure nowe Soveraigne Lord King *Henrie* the viith, and in the Heires of his Body lawfully comeing, perpetually with the Grace of God ſo to endure, and in none other.

Quâ quidem Billâ in Parliamento prædicto lectâ auditâ & maturâ deliberatione intellectâ, eidem Billæ, de aſſenſu Dominorum Spiritualium & Temporalium in dicto Parliamento exiſten. ad requiſitionem Communitatis prædictæ, necnon authoritate ejuſdem Parliamenti reſpondebat eidem, in formâ ſequenti.

Noſtre Seigneur le Roy, del aſſent des Seigneurs Eſpirituelx & Temporelx eſteantz en ceſt Parlement, & a la requeſt des Commens avantditz, le voet en toutz poyntz.

The

The King our Soveraigne Lord remembeyng, how ayenſt all Rightwilnes, Honour, Nature, and Dewtie, an inordinate, ſeditious, and ſlaundres Act was made, agayns the moſt famous Prince of bleſſed memory, Kinge Herrie the Sixte his Uncle, in the Parliament holden at Weſtminſter, the fourth day of November, the firſt Year of the Reigne of Edward the Fourth, late King of England, whereby his ſaid Uncle, contrary to due Allegianee, and all due Order, was attainted of High Treaſon. Wherefore our ſame Soveraigne Lord, by the Advice and Aſſent of the Lords Spirituals and Temporals, and Comines in this preſent Parliament aſſembled, and by Auctoritie of the ſame, ordeineth, enacteth, and eſtabliſheth, that the ſaid Act, and all Acts of Attainder, Forfaiture, and Diſablement, made or had in the ſaid Parliament, or elſe in any other Parliament of the ſaid late King Edward, ayenſt the ſaid moſt bleſſed Prince King Herrie, or againſt the right famous Princeſs Margaret late Queen of England, his Wife, or the right victorious Prince Edward late Prince of Wales, Son of the ſame bleſſed King Herrie, and Margarett, Jaſper Duke of Bedford late Earl of Pembroke, or Herrie late Duke of Somerſet; (the which Jaſper, and Herrie late Duke of Somerſet, for their true and faithfull Allegiances and Services done to the ſame bleſſed King Herrie, were attainted of High Treaſon) or any of them, by what Name or Names they, or any of them, be named in any of the ſaid Acts, be ayenſt the ſaid bleſſed King Herrie, Queen Margaret, Edward late Prince, and the ſame Dukes, and the Heirs of every of them, void, annulled, repelled, and of no Force, ne Effect. Reſtitutio Henrici Sexti, 1. H. 7. n. 16.

N. X. *Vid. CAP. F.* 103.

SAnctiſſimo in Chriſto Patri & Domino, Domino G. divinâ providentiâ Sacro-ſanctæ Romanæ Eccleſiæ, & univerſalis Eccleſiæ ſummo Pontifici. Edwardus ejuſdem gratiâ Rex Angliæ; Dominus Hiberniæ, & Dux Aquitaniæ. Cum reverentiâ & honore ſalutem, & pedum oſcula beatorum. Mandavit nobis olim per literas Apoſtolicas, quas pronâ mentis devotione recepimus veſtra ſanctitas reverenda, ut annuum cenſum, in quo Sacroſanctæ Rom. Eccleſiæ ratione Regni Angl. pro octo præteritis annis aſſeritis nos teneri, venerabili veſtro Magiſtro R. de Nogeriis Capellano veſtro aſſignari liberaliter ac integrè, nomine pred. Rom. Eccleſiæ, faceremus. Nuper autem alias literas veſtras recepimus cum Reverentiâ continentes, quod cum nos reſponſ. Relationis ſolutionis Cenſûs annui memorati, quam nobis pred. Capel. veſter expoſuit veſtræ & Eccleſiæ Romanæ Nomine, diligenter *Deliberatione Conſilii Procerum Regni noſtri, in Parliamento quod circa Octabas Reſurrectionis Dominicæ celebrari in Angliâ conſuerit*, pro eo duximus reſervand. quod tempore receptionis pred. lit. veſtræ, noviter ejuſdem Regni gubernacula ſumpſeramus, nunc de hujuſmodi cenſu ſine ulteriori procraſt. impendi Claus 3. E. 1. m. 9. Cedula. *In a Letter to the Pope.*

pendi faceremus eidem ſatisfac. plen. Capellano. Fatemur enim S. Pater & Domine, *ad Parliament. noſtrum in Octabis Reſurrectionis Dominicæ prox. pret. Regni noſtri Prælatos & Proceres evocaſſe*; ibiq; multa ſtatuiſſe divinâ gratiâ favente, quæ meliorationem ſtatûs Eccleſiæ Anglicanæ, reformationem Regni ejuſdem reſpiciunt, & communes profectus populi capiant incrementa. Set antequam eidem Parl. propter negotiorum multitud. quæ reformationis remedio indigebant, finem imponere valeremus, Eodem Capellano veſtro reſponſionem debitam ſibi fieri inſtanter poſtulante, quædam gravis nos invaſit, ſicut Domino placuit, infirmitas corporalis, quæ perfectionem multorum aliorum negot.& deliberationem Petitionis Cenſûs annui ſupardict. de quo dolemus non modicum, impedivit. Sicq; cum occatione infirmitatis hujuſmodi, à quâ per Dei gratiam cujus eſt perimere & mederi incepimus convaleſcere, Idem Parl. fuerit diſſolutum, & ſuper hoc nequiverimus ſuper Petitione Cenſûs ejuſdem deliberationem habere, *cum Prælatis & Proceribus antedictis*; *ſine quorum communicato conſilio ſanctitatæ veſtræ ſuper predictis non poſſumus reſpondere*; *Et jurejurando in coronatione noſtra preſtit. ſumus aſtricti, quod jura Regni noſtri ſervabimus illibata, nec aliquod, quod Diadema tangat Regni ejuſdem, abſq; ipſorum requiſito conſilio faciemus*; Reverende Benignitati veſtræ humiliter ſupplicamus, & pro dono petimus ſpirituali, quatenus moleſtè non ferat ſanctitas veſtra, ſi ad præſens ſuper pred. ſicut vellemus, non poſſumus reſpondere. Imo patientia veſtra paterna ſi placet nos ſuper hoc habere dignetur excutatos, Pro firmo ſcituri pie Pater & Domine, quod *in alio Parliamento noſtro, quod ad feſtum Sancti Michaelis prox. fut intendimus dante Domino celebrare, habito & communicato Conſilio cum Prælat. & Proc. memoratis, vobis ſuper præm. ipſorum Conſilio dabimus reſponſionem.* Conſervet vos Dominus Eccleſiæ Sanctæ ſuæ per tempora longæva. Teſte meipſo apud Weſtm. 19. die Junii Anno Regni noſtri 3°.

THE

The Preſent CONVENTION *a Parliament.*

N. XI. *Vid. CAP.* 10. *F.* 111.

I. THat the formality of the King's Writ of Summons is not ſo eſſential to an *Engliſh* Parliament, but that the Peers of the Realm, and the Commons, by their Repreſentatives duly Elected, may legally Act as the great Council and Repreſentative Body of the Nation, though not ſummon'd by the King, eſpecially when the Circumſtances of the time are ſuch, that ſuch Summons cannot be had, will (I hope) appear by theſe following Obſervations.

Firſt, The *Saxon* Government was tranſplanted hither out of *Germany*, where the meeting of the *Saxons* in ſuch Aſſemblies was at certain fixed times; *viz.* at the New and Full Moon. But after their Tranſmigration hither, Religion changing, other things changed with it; and the Times for their publick Aſſemblies, in conformity to the great Solemnity celebrated by Chriſtians, came to be changed to the Feaſts of *Eaſter*, *Pentecoſt*, and the *Nativity*. The lower we come down in Story, the ſeldomer we find theſe General Aſſemblies to have been held; and ſometimes (even very anciently) when upon extraordinary Occaſions, they met out of courſe, a *Precept*, an *Edict*, or *Sanction* is mentioned to have iſſued from the King: But the Times, and the very Place of their ordinary Meeting having been certain, and determined in the very firſt and eldeſt Times that we meet with any mention of ſuch Aſſemblies, which times are as ancient as any Memory of the Nation it ſelf; hence I inferr, that no Summons from the King can be thought to have been neceſſary in thoſe days, becauſe it was altogether needleſs.

Secondly, The Succeſſion to the Crown did not in thoſe days, nor till of late Years, run in a courſe of Lineal Succeſſion by right of Inheritance: But upon the Death of a Prince, thoſe Perſons of the Realm that Compoſed the then Parliament, Aſſembled in order to the chooſing of another. That the Kingdom was then Elective, though one or other of the Royal Blood was always choſen, but the next in Lineal Succeſſion very ſeldom, is evident from the Genealogies of the *Saxon* Kings, from an old Law made at *Calchuyth*, appointing how, and by whom Kings ſhall be choſen; and from many expreſs and particular Accounts given by our old Hiſtorians, of ſuch Aſſemblies held for Electing of Kings. Now ſuch Aſſemblies could not be Summon'd by any King; and yet in conjunction with the King that themſelves

ſelves ſet up, they made Laws, binding the King and all the Realm.

Thirdly, After the Death of King *William Rufus*, *Robert*, his Elder Brother, being then in the *Holy Land*, *Henry*, the youngeſt Son of King *William* the Firſt, procur'd an Aſſembly of the Clergy and People of *England*, to whom he made large promiſes of his good Government, in caſe they would accept of him for their King; and they agreeing, That if he would reſtore to them the Laws of King *Edward the Confeſſor*, then they would conſent to make him their King. He ſwore that he would do ſo, and alſo free them from ſome Oppreſſions, which the Nation had groan'd under in his Brothers and his Fathers time. Hereupon they choſe him King, and the Biſhop of *London*, and the Archbiſhop of *York*, ſet the Crown upon his Head: Which being done, a Confirmation of the *Engliſh* Liberties paſs'd the Royal Aſſent in that Aſſembly, the ſame in ſubſtance, though not ſo large as King *John*'s, and King *Henry* the Third's *Magna Charta*'s afterwards were.

Fourthly, After that King's Death, in ſuch another Parliament, King *Stephen* was Elected, and *Mawd* the Empreſs put by, though not without ſome ſtain of perfidiouſneſs upon all thoſe, and *Stephen* himſelf eſpecially, who had ſworn in her Father Life-time, to acknowledg her for their Sovereign after his deceaſe.

Fifthly, In King *Richard* the Firſt's time, the King being abſent in the *Holy Land*, and the Biſhop of *Ely* then his Chancellor, being Regent of the Kingdom in his Abſence, whoſe Government was intolerable to the People for his Inſolence and manifold Oppreſſions, a Parliament was convened at *London*, at the Inſtance of Earl *John*, the King's Brother, to treat of the great and weighty Affairs of the King and Kingdom; in which Parliament this ſame Regent was depos'd from his Government, and another ſet up, *viz.* the Arch-Biſhop of *Roan* in his ſtead. This Aſſembly was not conven'd by the King, who was then in *Palæſtine*, nor by any Authority deriv'd from him, for then the Regent and Chancellor muſt have call'd them together; but they met, as the Hiſtorian ſays expreſly, at the Inſtance of Earl *John*. And yet, in the King's Abſence, they took upon them to ſettle the publick Affairs of the Nation without Him.

Sixthly, When King *Henry* the 3*d*. died, his Eldeſt Son, Prince *Edward*, was then in the *Holy Land*, and came not Home till within the third Year of his Reign; yet, immediately upon the Father's Death, all the Prelates and Nobles, and four Knights for every Shire, and four Burgeſſes for every Borough, Aſſembled together in a great Council, and ſetled the Government till the King ſhould return: Made a new Seal, and a Chancellor, *&c.*

I inferr from what has been ſaid, that Writs of Summons are not ſo Eſſential to the being of Parliaments, but that the People of *England*,

land, especially at a time when they cannot be had, may by Law, and according to our Old Constitution, Assemble together in a Parliamentary way without them, to treat of and settle the Publick Affairs of the Nation. And that, if such Assemblies so conven'd, find the Throne Vacant, they may proceed not only to set up a Prince, but with the Assent and Concurrence of such Prince, to transact all Publick Business whatsoever, without a new Election; they having as great Authority as the People of *England* can delegate to their Representatives.

II. The Acts of Parliaments not Formal nor Legal in all their Circumstances, are yet binding to the Nation so long as they continue in Force, and not liable to be questioned as to the Validity of them, but in subsequent Parliaments.

First, The two *Spencers*, *Temp. Edvardi Secundi*, were banished by Act of Parliament, and that Act of Parliament repealed by *Dures & Force*; yet was the Act of Repeal a good Law, till it was Annull'd 1 *Ed.* 3.

Secondly, Some Statutes of 11 *Rich.* 2. and Attainders thereupon, were Repealed in a Parliament held, *Ann.* 21. of that King, which Parliament was procur'd by forc'd Elections; and yet the Repeal stood good, till such time as in 1 *Henry* 4. the Statutes of 11 *Rich.* 2. were revived, and appointed to be firmly held and kept.

Thirdly, The Parliament of 1 *Hen.* 4. consisted of the same Knights, Citizens and Burgesses that had served in the then last dissolved Parliament, and those Persons were by the King's Writs to the Sheriffs commanded to be returned, and yet they passed Acts, and their Acts though never confirmed, continue to be Laws at this day.

Fourthly, Queen *Mary*'s Parliament that restored the Popes Supremacy, was notoriously known to be pack'd, insomuch that it was debated in Queeen *Elizabeth*'s time, whether or no to declare all their Acts void by Act of Parliament. That course was then upon some prudential Considerations declined; and therefore the Acts of that Parliament, not since repealed, continue binding Laws to this day.

The reason of all this, is, Because no inferiour Courts have Authothority to judge of the Validity or Invalidity of the Acts of such Assemblies, as have but so much as a colour of Parliamentary Authority.

The Acts of such Assemblies being Entred upon the Parliament-Roll, and certified before the Judges of *Westminster-Hall* as Acts of Parliament, are conclusive and binding to them; because Parliaments are the only Judges of the Imperfections, Invalidities, Illegalities, *&c.* of one another.

The Parliament that call'd in King *Charles* the Second, was not aſſembled by the King's Writ, and yet they made Acts, and the Royal Aſſent was had to them; many of which indeed were afterwards confirmed, but not all, and thoſe that had no Confirmation, are undoubted Acts of Parliament without it, and have ever ſince obtained as ſuch.

Hence I Infer that the preſent Convention, may, if they pleaſe, aſſume to themſelves a Parliamentary Power, and in conjunction with ſuch King or Queen as they ſhall declare, may give Laws to the Kingdom as a legal Parliament.

ALLE-

ALLEGATIONS

In behalf of the

High and Mighty Princeſs

THE

LADY MARY,

NOW

Queen of Scots,

Againſt the Opinions and Books ſet forth in the Part and Favour of the

LADY KATHERINE,

And the reſt of the

Iſſues of the French Queen,

Touching the

Succeſsion of the Crown.

Written in the Time of

QUEEN *ELIZABETH.*

London, Printed by *J. D.* in the Year 1690.

THE PUBLISHER TO THE READER.

I *Thought it not improper to ſubjoin the following Treatiſe, written by a Lawyer in Queen* Elizabeth's *Time, whether ever printed or no I cannot ſay, in favour of the Title of the Queen of* Scots, *againſt the Pretences of the Lady* Katherine, *deſcended from the French Queen, Siſter to* H. 8. *and married to* Charles Brandon, *Duke of* Suffolk.

The Author ſhews himſelf skill'd in the Civil, as well as the Common Law; and tho he had occaſion to maintain a ſtrict Right of Succeſſion to the next in the Line, according to which he will have it, that H. 4. H. 5. H. 6. *with-held the Crown by wrong; Which I ſuppoſe proceeded from his not obſerving what Parliamentary Confirmations their Poſſeſſions had; Yet himſelf ſays,* That we are all bound in Reaſon, to have always more regard to the State and Dignity of the whole Weal Publick, than of the private Preferment or Commodity of any particular Perſon. *Nay, he ſays it appears from Hiſtory, that* many Princes ſettled in their Kingdoms, have been judged unworthy of their Callings, *for what would now be look'd on as a very ſlight Matter. And many things he ſpeaks with great Judgment, which tend towards the juſtification of what has lately been done for the* Publick-Weal, *and Preſervation of the* State and Dignity of this Realm.

THE AUTHOR TO THE READER.

AS every man may thinke it very neceſſary, bothe for the greate weale, and greate quyetnes of this State, to know certenly, to whome, of right, the Honour and Dignitie of this Imperiall State, and Crowne of this Realme of *England* ſhuld fall, or deſcend unto (yf ought ſhuld happe to Queene *Elizabeth* our ſupreame and moſt graciouſe Governour) whome it may pleaſe God longe to proſper with longe Lyfe, good Husband, and meny Children, to her Highnes contentation, and the generall weale and reaſtfull dayes bothe of her Majeſtie, and of the whole Realme: So thinke I that none can lyke well, that any, with eny coloured or deceyueable meane or argument, ſhuld go about to ſette forth or perſwade the naturall and lovinge Subjectes thereof; that the Succeſſion appertayned to thoſe, that in deede have no juſt Right, Title, or Intereſt to the ſame. And therfore becauſe ſome have endevored themſelfes by wrytinge to ſhew, that the Succeſſion apperteyned unto the Lady *K. Grey*, the which, as may appeerr, by no dyrect right or reaſon, can pretend eny juſt Title or Clayme thereunto. I have not thought it unfitt, heerby to ſhew the ſtate and troth therof more playnly, to ſuch, that ells, either by ſuch practiſes, or ells by ſuch workes, mought otherwyſe reſt deceyvid. And that I ſhal be thus occaſionyd to utter heerin, neither is, nor ſhal be with eny mynd or motion to offer eny injury, or to ſtayne or ſpotte the Name or Honour of eny, but onely to anſwer thoſe Argumentes, the which as they be grounded upon no truth, ar ſo worthy of no favour. And to anſwer therin, without wreſtinge or applyenge eny caſe otherwyſe, then the ſtate of the mater doth moſt playnly and truely crave the pronunciation of the Law. So that yf any thyng be ſayd, it is the very neceſſitie of the cauſe, ſo neceſſarelie for this ſtate and this tyme, to be thus touched, and the judgment of the Law towchinge the ſame, that ſpeakith or vtterith eny thinge, and ells no other diſpoſition. And bicauſe our Bond and Duty is rather to haue regard of the State and Dignity of the whole Weale Publik, and of the good ſucceſſe, proſperyte and quietneſſe therof, then of the undue title, or *intereſt*, of eny particuler perſon or perſons. I truſt this travaile may the rather be acceptid and taken in better parte.

And

And ſo to the Matter.

Firſt to the illegitimacion of the Lady *K.* and the reſte of th' Iſſues of the Frenche Q.
And after of theyr Force or Intereſt by the Wyll.

Touchinge the Firſt. It is notorious and well inough knowne, that when *Charles Brandon* Duke of *Suff.* maryed with the Lady *Mary* the Frenche Q. that he had then an other Wyfe lyvinge, which was the Lady *Margaret Mortimer*, with whome after mariage he lived dyvers yeres as lawfull Man and Wyfe: and after upon certayn diſcorde betweene theim, of his owne motion, without any fourme or maner of lawfull judgement, that he ſeperated him ſelfe from her and forſoke her. And what raſhnes or rather foly may it be comptid, to reply or wryte againſt ſo manyfeſt a troth with conjectures? as to ſay, it is not likely that K. *Henry* wold ever have conſented that his Siſter ſhould mary one which had an other Wyfe lyvinge. Since that ther is yet ſo meny lyvely Wittneſſes, the which of certeyn knowledge can be Teſtes, that *Charles Brandon* and the Lady *Mortimer* wer Man and Wyfe, and have ſeene and did know the Lady *Mortimer* longe after the mariage, yea, and peradventure after the death of the ſaid French Q. And touchinge the K. although it is to be thought, that yf he had known that the Duke had had an other Wyfe lyving, that he wold not have conſentyd that his Siſter ſhold have maryed him: It might be notwithſtanding full well, and it is poſſible that yet he had one, and that the Kinge mought not know thereof. For as Princes have ben the greater or the mightier, ſo much the leſſe, comonly, have they ben wontyd to underſtand of the doinges in ſuch maters of pryvate Perſons. But in this caſe ther be as perfecte Clerkes, and of as goode underſtandinge as any were, at th' adviſe of theſe Bookes abrode, that ar of opinion certen, that the French Q. and the Duke wer matchid before the Kinge was prevy thereof: and ſome Pardon or Pardons obteyned for the ſame, upon ſmall ſearch, may happen to be founde that may teſtifye as much; and of neceſſity, we can no otherwyſe thinke, but that it was ſo: Synce that as much as is ſayd of the Lady *Mortimer*, may be affirmyd by the ſayd Witneſſes as a thinge moſt certeyne and notorious. The which beinge true, then is it certeyn that the Lady *Mary*, the ſaid French Q. cold not be his lawfull Wyfe. And that the ſaid *Charles*, Duke of *Suff.* could not lyve with her but in Adultery. For the wordes of the Lorde be playne. *(a) Quicunq; dimiſerit uxorem, niſi ob fornicationem, & aliam duxerit, mœchatur. Et qui dimiſſam duxerit, mœchatur.* Nowe that one borne in Adultery, and notwithſtanding is legitimate, that cannot be: And therefore the Lady *K.* beinge comme of one not legitimatly borne, cannot inherite, or be capable of the Crowne. And heerin it is to litle purpoſe to cavill with Canons or Decretalles of the Pope, againſt the playne and manifeſt Word of God, from whoſe uſurped Power, as this Realme is moſt happely delyvered; ſo hath his Lawes in the ſame loſte their force and vigore. But admitte that the Pope's Lawe had in *England* any Authoryte, at leaſt it ſhuld be an impious

The ſaide Charles *matchid with the Frenche Queene* 1515. *She died* Anno. 1532. *La.* Mortimer *died* An. 1533.

(a) Mat. 19. & Marc. 10.

thing in what place ſoever it wer, where the Worde of God is ſo cleere and certen, to ſticke rather to the Pope's Law, then to the Lawe of God. (*b*) But all this notwithſtandinge, lette us ſee what Reaſons they be beſydes, that ar brought in the favour of the Lady *K.* One is, forſooth, that the Lady *Mary*, the French Q. and the Duke of *Suff.* havinge lyved meny yeres togither as Man and Wyfe, and their Matrimony celebrated publikly in the face of the Churche, without eny thinge ſayd agaynſt theim duringe their lyves; that therfore though he had twenty Wyves then lyvinge, that yet the Children of the Queene and Duke are to be taken no other then as legitimate. And th' other, that it is ſufficyent for the legitimation of their Children, that the French Q. ſeemyd to have no knowledge that he had eny other Wyfe lyvinge.

(*b*) Parnormi in ca. ſuper illa de ſecundis nuptiis.

To theſe greate Reaſons, and their Authority, it is eaſy ynnough to anſwer. For it is a Maxime in the Civill Lawe, That that which from the beginninge is not good or lawfull, cannot with eny Proceſſe of tyme be betteryd. (*c*) And therfore the Matrymony not beinge lawfull at the firſt, no tyme is ſufficyent or able to make it lawfull. And yf that which is ſayde of the long contynuance of the Matrymony, without eny thinge ſayd agaynſt it, had ben ſuch to have comme in eny conſideration, it might have had ſome colour or ſhew of reaſon; the rather, yf the parſons agaynſt whom eny ſuch controverſie ſhuld have ryſen, had ben of ſuch degree or condition, as eny might freely have proceedid againſt theim. But they were Princes, the Woman the Kinge's Syſter, and the Man a Duke, and in greate favour with the Prince, in ſuch ſorte, that the greate and the iminent danger and perill that did depend therof, was, and is the aparaunt and manifeſt cauſe why no Man did or durſt begin with theim, or attempt eny ſuch matter, and ſpecially in a thinge that touchid any whitte the diſpleaſure or diſhonour of the Kinge himſelfe: And therfore that long contynuance in Matrimony, after that ſort, without controverſy, is not to be countyd for quiet and peaceable, but rather injurious and violent. (*d*) And ſuch as cannot help eny thing to the legitimation of the Children born in Adultery.

(*c*) L. quod initio ff. de regu. juris.

(*d*) Arg. l. in. fi. C. de ann. exe. & l. 1. §. ſi quis autem ff. de iti. act. pri. C. quia. de conceſ. pre. l. §. 1. ff. quod vi aut clam. & l. de pupillo. §. ſi quis ff. de ope. noui nun. cum ibi not. per Bar. & alios.

To th'other, touching the ignorance of the Queen, although it were graunted, that ſome ignorance, in ſome ſort, might the rather ſhadow the illegitimation of the Children; yet it is not therfore that every kynde or ſorte of ignorance mought be acceptid to bolſter forth ſuch cauſes, but a probable ignorance: for the Lawe tendith to the favour of the vigilent and diligent in their own cauſes, and not to the wilfull, ſloathfull, or negligent. And thoſe that contractith with eny, they ought to know and underſtand eche of the others State and Condition, (*e*) and not to underſtand that is commonly brutyd, is to be attributed unto the Parties default. (*f*) And ſuch a kind of ignorance is callid a Voluntary, or ellis a deſſembled Ignorance, and helpith nothing to the ligitimation of the Children, the Matrimony beinge contrary to the publike Lawe of Honeſty, even by the Canonicall and Civill Law; (*g*) for ſynce *Charles Brandon*, after Duke of *Suff.* had lyved with the firſt Wyfe ſo long, being of ſuch a callinge, and ſhe his Wyfe, of ſuch a Houſe, and ſuch a Lyvinge, and in the ſame Countrey; It had ben very eaſy, with eny never

(*e*) l. qui cum alio contrahit. ff. de regu. juris.

(*f*) l. quod verba ff. depon. & l. ſi ut certo. §. nunc videndum. ff. commo. cum ibi notatis.

(*g*) Cap. cum inhibitio. de clan. deſp.

never ſo little a diligence uſed, to have come to the knowledge, whether he had had eny other Wyfe lyvinge, or no. And the Lawe entendith, that one that either doth underſtand, or ells is in abilitie eaſily to underſtand, to be all one. (*b*) Since then the French Q. yf ſhe had lyked eny thinge to have herkened, ſearched, or demaundid, moght eaſely have had intelligence, whether the Duke had eny Wyfe lyving or no; It is as much as if ſhe had known it: ſo doth it manifeſtly appeere that the Children born in ſuch Matrimony, cannot, by eny meane, be reputyd or taken for legitimate, or able to eny Enheritance, and much leſſe of the Crowne, ſynce that *for the Honor and Dignitie of the Realme, whoſoever ſhuld be worthy or capable of the Crowne, it is meete, that not onely they ſhuld be free from eny ſtayne or ſpotte, but alſo from all ſuſpicion of eny.* As *Julius Ceſar* ſayd of his Houſe, when, for the onely ſuſpicion of Adultery, he did put away his Wyfe, ſayenge; *That the Houſe of* Ceſar *ought not only to be without Vyce, but alſo without all ſuſpicion of eny.* Beſydes, if you ſhould conſent to put your ſelfes in ſubjection to ſuch ſo unworthely born; Behold, and conſyder, I pray you, by the way, how farre off yow ſhould ſhew your ſelfes inferior in conſideration, from the many and noble Examples left unto us by other Countreys, as particulerly of later Memory, by the Noble Nation of the *Spayniardes.* Where a Daughter beinge borne of the Queene, Wyfe to *Hen.* 3. Kinge of *Caſtile,* and moſt ſpeache, great preſumptions and ſecreat murmuracion therof paſſinge, that not the Kinge, but an Adulterer, ſhuld be the Father therof. The Barons, Earles, and other Nobles of the Realme, did aſſemble together; and conſydering *what ſpotte and infamy it ſhuld be unto the whole Nation and Countrey,* yf in time cominge they ſhuld have their Q. a Woman thoght of, and eſteemyd but as a Baſtard, did not only deliberate not to acknowledge, or not allowe of her as legitimat Heyre of the Realme, after the death of the Kinge; But wold without delay be diſchargid, and aſſurid from that gratte diſhonor and infamy. And therupon ſo became moſt humble Suters to the K. that *as it apperteynid unto the Honour and Dignitie of him and of the whole Realme*; It moght ſo pleaſe him to repudiate the Q. as Adultereſſe, and declare that Daughter not to be his, but borne in Adultery. Shewing him beſydes, that *yf he wuld not have regard unto his owne Honour, and to do that, that touched ſo much his Eſtate, and the Dignytie of the whole Countrey; that they, for their partes, could not, nor would not ſo much forget their Duties to ſuffer it. But rather determyned to depoſe him, as a Man that made ſmall compt, either of his Callinge or Honour, and therefore unworthy of the Crowne.* By which yow may ſee how farre ſuch Occaſions may ſometymes cary Men paſt the termes of their Callinges; wherof did grow afterward greate Contention, and finally that Daughter never admittyd unto the Crowne, but the Succeſſion transferred unto the Lady *Iſabell,* Siſter of the K. A Queene, for her Valour and rare Vertues, of great Fame and Renowne. And yet, notwithſtanding, accordinge to the Canonicall Lawe, (of force and ſtrength in ſuch Caſes as moſt proper Judge) although the Adultery of the Queen indeed wer more then manifeſt, yet moght they have preſumyd that the Child had ben rather of the Husband,

(*b*) l. pen. ff. ad maced. l. in bonorum. in fine ff. de bonorum poſſ.

The Caſe of the putative Prince of Wales.

then of the Adulterer; ſo favorable are thoſe Lawes unto the Birth. But thoſe Noble Men, as jelous of the Honour, Fame, and Reputacion of their Countrey, did thinke that *it importyd a great deal more to maynteyne and aſſure the Dignitie of the whole Realme, refuſinge a Perſon of doubtfull Birth, then to have reſpecte unto the particuler Intereſt of that Child.* And thus tendrid theſe ſo much this Honour, that they could not, nor wold not tary the tyme to entreate of the Succeſſion, when it ſhuld happe, but wold, by and by, put the mater out of doubt. And you, when it is ſo needfull, and the tyme doth ſo require it, to knowe one certeynly for your Prynce and juſt Governour heerafter; Will you make no compt herof? They, I ſay, for theſe reſpectes, did refuſe one, that according to th' ordinary courſe of the Law, they moght eaſely have preſumed of to have ben legitimate: And will yow ſubmitte your ſelfes to a perſon, that, accordinge to the ordinary and Canon Rule and Order of the Lawe, is ſo manifeſtly knowen, taken and ſhewyd, diſcendid playnely as illegitimate? Oh take heede, for yf ever this happe in your Heddes, what other thinge will it turne or growe unto, but vnto an open and univerſall declaration unto all the World, that yow, betweene Honour and Diſhonour, Right or Wronge, cauſes of Proſperyte or Ruyne, do make no difference at all: Which opinion once conceyvid of yow, boaſt, bragge, or compare after, the Nobilitie or Excellency of your Countrey, or the Stouteneſſe of your Selfes, with other Nations, ye may well ynuough; but whoe wyll not rather mocke or ſcorne at your madneſſe or folly, then beleeue yow as of eny Reaſon or Judgment?

And this that is ſayd (as is before touchid) hath auctoryte, and is, both accordinge to Divine, Canon, and Civill Lawe, and beſydes, accordinge to the Lawe of Nature and Reaſon. But though we ſhuld admitte, that by the Canon Lawe theiſe deſcendentes of the French Q. were to be tolleratyd or allowid as legitimate, yet doth it not follow, for all that, that in this Realme they ought to be taken or accompted for ligitimate or inheritable: Bicauſe that for eny to be borne legitimate, heritable or Baſtard Heere, is judged, not accordinge to the Canon Law, but accordinge to the Lawe of the Realme. And this doth appeere manifeſtly, by the Statute of *Merton*, Cap. 9. Where the Biſhops inſtanced the Lordes, that they wold conſent that all ſuch as wer borne before Matrimony, ſhuld be legitimate according to the Canon Lawe, as well as they that wer borne within Matrimony. Which could not be obteyned; but determination made, that they ſhuld ſtande unto the Lawes of the Realme, and not unto the Canons: And that one borne of a ſecond Wyfe (the firſt ſtill lyvinge, by occaſion of ignorance, that the ſecond Wyfe may pretend, that the Husband had no other Wyfe alyve) ſhuld be taken or compted for ligitimate or inheritable, is not auctorized by our Lawe. But playnly the contrary, as may appear by *Bracton*, *Glandvill*, *Britton*, *Parkins*, and the whole courſe of the Lawe. Wherfore to alledge that it is not lawfull to compt ſuch for Baſtardes after their death, though during their Lyfe they wer taken or compted for no other, then as legitimate, is a poore healpe, a ſlender proof, and to this purpoſe makith nothinge at all; for *Litleton*, Cap. of Diſcentes doth declare, that this continuance to purge

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the Baſtardy, is not to be alleadgid in every ſorte of Baſtardie, but in that onely that is born of the Woman that the Father doth after mary, with other Circumſtances, as may appeer, farre from this Mater. But to object that heerin might further have fortunyd, though peradventure there hapt never eny ſuch mater, becauſe nothinge may be thought of now, or ells remembrid heerafter, that in this caſe to the uttermoſt that might have chaunſed, may not preſently be fully ſayd unto, and anſweryd; Let us admitte, for the ſalvinge of the Baſtardy of theſe Iſſues, that the Pope's Bulle mought have been obteynid, (which though both agaynſt eny godly and lawful Matrimony, and agaynſt the Law of the Lande, perhappes, mought eaſely have been compaſſed) yet notwithſtandinge ſhuld the ſame have made as little to the purpoſe, as th' other proper Reaſons before alledgid: For ſuch a Bulle (though it had ben of valour in *England*, as it is neither now, nor yet ever was when the Pope was heere in greatiſt Authoryte) ſhuld either haue pronounced and declared the ſame Children to haue ben legitimately borne; or ells of Baſtardes, it ſhuld have made theim legitimate.

In as moche as it ſhuld have declarid theim to haue ben legitimately borne, it had ben needefull that it ſhuld haue ben with pronuncinge the Matrimony with the ſaid Queene and Duke legitimate, notwithſtandinge the other Wyfe had ben alyue; and that could not have ben grauntyd, (the caſe being as it was) but vpon ſome falſe or fayned ſurmiſe. And therfore, accordinge to their owne Lawes or Canons, it ſhuld haue ben of no force or valour. But let it haue ben accordinge to what Canon they had lyſted; the Common Law of this Realme of *England* ſhuld never haue ben bounden by any ſuch Bulle, and ſpecially when the mater vpon eny Poynt of Illegitimacion is to be callid in queſtion, by reaſon of eny Iſſue joyned vpon Baſtardie, after the death of the Parties, which ar to be impeached as Baſtardes, by reaſon of eny ſecond, or other Mariage, during the Lyfe of the firſt Wyfe, the ſame being never upon eny Sute at the Common Lawe brought in Queſtion, whileſt the Parties in whome Baſtardie is not allegid, lyvid. The greateſt doubt that in ſuch caſe mought haue hapt, is, that if the mater had ben callid in queſtion at the Common Law, duringe the Pope's Juriſdiction in the Lyues of eny of the Children of the ſaid Duke and the Frenche Queene (which be now all deceaſſed) and an Iſſue had ben joined vpon general Baſtardy, or vpon ſome other generall Iſſue of Divorce, the ſame ſhuld then haue ben tried by the Certificate of the Ordinary; and therby, perhaps, by ſomme ſuch ſleightful Certificate, the vnlawfull Doings of the Pope (if eny ſuch had ben in his tyme) might ſo haue ben allowed covertly. But allowing it were triable at this day by the Ordinary, the Pope's Diſpenſation carryeth not in our Law the Juriſdiction of the Ordinary; nor is not ſo to be receyvid, but it muſt recyve a Tryal directly by th' Ordinary, whoſe Certificate muſt proceede accordinge to ſuch mater as may informe a Truthe, or ells it muſt receyve the Tryall by a Jury of twelve Men, according to the common uſage of Tryalles. And whoe can thinke, if the cauſe of eny ſuch ſeparation, ſtirred upon no juſt Motion, but onely of corrupte or fleſhly diſpoſition, ſhuld come now in queſtion; that either eny Ordinary, or ells eny Jury, in ſo

Vid. Bracton, *F.* 216. *upon the Statute of* Merton, *he mentions a ſpecial return at that time required. Of which more in the ſecond Part.*

playne and open Baſtardy, wold either ſo farre forgeete or hazard theimſelfes, or elles exceede the Bondes of their Dutyes to God, their Countrey, or all honeſt Reputation to the World, to certify ſuch Iſſues to be ligitimate; wherby no Controverſy ſhuld be decyded, but rather dangerouſly encreaſed, and the whole Government of ſuch a Noble Realme therby brought unto a double Baſtardy as the caſe now ſtandith: For touchinge th' Iſſues betweene the Duke and the French Queene, yf queſtion be askyd whether they be lawfull? anſwer is made, They are not, becauſe the Duke was firſt lawfully marryed to the Lady *Mortymer*, and contynued with her aboue ſeven Yeres; and that he was maryed after to the French Queene, duringe the ſayd Lady *Mortymer*'s Lyfe, whoe overlyved the byrth of all the French Queenes Children: Which anſwer, by our Law, cleerly diſtroyeth the ſeconde Mariage, and makith it voyde, and ſo all the Iſſues cleerly Baſtardes. And this is th' abſolute Judgement of our Lawe, ſo as now th' Iſſues of the French Queene cannot eny way help theimſelfes, but they muſt firſt deſtroy the firſt maryage, which our Lawe will never diſallowe untill it be firſt diſanulled. And therfore yf the Duke of *Suff.* had had eny Iſſue by the L. *Mortimer*, thoſe Iſſues ſhuld haue ben allowed his Heyres, by our Lawe, notwithſtandinge the Mariage after with the French Queene. And therfore for that the French Queenes Iſſues reſt diſſabled in poynt of Common Lawe, they muſt make theimſelfes able, by ſome ſuch proofe as may ſatisfye the ſame Lawe, before they can be receyvid. And yf they ſeeke their relief by eny diſpenſation from *Rome* (as is ſayd) it ſervith not, although ther wer a Dyvorce to be proovyd by eny ſuch Inſtrument. And it is moſt true, that they ar able to proove no lawfull Devorce within the Realme, though by ſearch it hath not onely ben perceyvid, but is evidently to be provyd howe meny corrupte and ſubtile attemptes by ſundry meanes hath ben taken in hande to cowntenance thoſe matches with the French Queene and other, as by a ſuppoſition of a Sute ſued betweene one *Anne Browne* and the ſaid *Charles Brandon*, wherof ſhuld aryſe the diſpleaſure betweene the Lady *Mortimer*, and the ſaid *Charles* her Husband, ſeven Yeres and more after their Mariage: During which time the ſaid *A. B.* God wotte, never tooke it ſo earneſtly as ſhe once complaynid to the Lawe, or ever thought of the Mater, nor as it ſeemith wold ever haue done, yf in this tyme the ſayd *Charles* had not conſumyd the ſayd Lady *Mortimers* Welth and Lyvelyhoode, and found her Yeres not anſwerable to his Yeouth and wanton Diſpoſition; for ſatisfyenge wherof, this Acquayntance, that Bely riſinge, and theſe Practiſes after hapt with the ſame *Anne*. Wherof riſeth now theſe feeble-groundid Hiſtories, this Speche, and theſe Devices, that ſhe forſooth ſhuld be precontracted to him before, and had a Childe; which Childe, eight Yeres after, is knowen well inoghe, was but two or three Yeres olde at the moſte. A ſtrange caſe; and yet ſhe had it at ſeventeen, or ninteen, and was but twenty at the tyme of this ſuppoſed Divorce, when the ſayd *Charles* and ſhe came togither. Well, I ſay no more, for the Caſe is skant worth the ſpeakinge of; but yf this Mater wer to be ſhewid, ye ſhuld ſee ſuch a patron of a Divorce, as they that fayneſt wold have it, wold ſooneſt be aſhamyd to countenance their Title

upon

upon the ſame; and yet theſe Paſſages thus hapt in theſe Dayes, and in that Lyfe, from better to worſe, advoutry upon advoutry, and ſuch other ſtuffe.

But how vayne is it to wryte, or to occupy yow with theſe Digreſſions, as with what mought haue ben, what is ſuppoſed to haue bene, or ſuch other vayne and frivolous practiſes or ſhifts, as heerafter may be, when it behoovith ſo much preſently to conſyder what in this caſe properly may and ought to be? And therfore becauſe it is one of the moſt aſſuryd wayes to underſtand what the Lawe willeth, or is in eny queſtion to admitte, that the Mater were at preſent to be decided by dewe courſe of Lawe, with all the Policies that on bothe partes may be uſed for their moſt avayle and purpoſe, and ſo to bringe the ſame in Forme of Lawe to ſuch a poynt, as judgement may be therof gyven rightly. Take heerin for Enſample, that *I. S.* made a Gifte of Lande to *Charles* Duke of *Suff.* and the Frenche Queene, after their Mariage, and the Heires of their Bodyes; and now the ſame *I.S.* bringith his Action of Formedowne in reverter for the ſame Lande, agaynſt the Lady *K.* and her Siſter, and the reſydue of that Lyne; and ſuppoſeth that the Land ought to him to revert, for lacke of Iſſue lawfully begotten betweene the Duke and the French Queene: and they come and pleade, by way of Barr, the Mariage betweene the French Queene and the Duke, and convey the Pedegree lineally. Wherunto *I. S.* replieth, and ſhewith a former Maryage with the Lady *Mortimer*, and averrith her Lyfe after their Birth. And the Lady *K.* and the reſt, cannot by Lawe maynteyne their Barr, and deſtroy his Title, unleſſe they pleade a lawfull Divorce; and yf they pleade eny ſuch, yet the ſame ſhall not be under the Pope's Bulle, but by the Certificate of th' Ordinary, and for that th' Ordinary hath no Recorde, or other lawfull Proofe, wherupon he can lay eny Foundation to certify any lawful Divorce, therfore the Certificate cannot be avaylable. And ſo to conclude, ther is no doubt in the troth of the caſe, and by lyke reaſon no doubt in Lawe (if you will allowe the Proceedinges accordinge to troth) but that the Baſtardie remaynith, and is not able to be purged.

And yf the Bulle ſhuld have ben to make the Children of the ſayd Queene and Duke of Baſtardes legitimat, beſydes the Reaſons before alledgid, which ar as effectuall in this purpoſe as in the other; yet it is moſt true, that ſuch legitimation had ben of no more force or Vertue heere in this Realme of *Englande*, then they be of in thoſe Contreyes that ar at the Pope's Obedience. And who ſoever is legitimated ther of the Pope, is not to be underſtandid for all that, to be legitimate to inherite, but in the Lands that do belonge vnto the Churche. (*i*). And beſydes, who ſoever, is legitimate, and abled generally to eny Dignitie, is not in that neither to be underſtandid legitimatid vnto a Royall Dignitie. (*k*) And the Reaſon is, that whoſoever is borne Baſtard, though he be after made legitimate, is ever reputyd, notwithſtandinge, as infamous. (*l*). And theſe Reaſons may ſerve alſo to the Allegations before ſayd, of the innocency of the Queene, and the contynuance of the Matrimony without controverſy: for they do declare playnly, that although the Lawes, where they entreate of eny other Enheritance, ſhuld make

(*i*) Imo, in ca. per venerabilem qui filii ſint legi.
(*k*) Barthol. & Bal. in l. eam quam. C. de fide. con.
(*l*) Bal. in lege generaliter §. cum autem. C. de inſt. & ſubſti. ſub condi. factis. & Alexan. in 3. ff. de il. & poſt.

as legitimate the Children ſo borne (the which indeede they no ways can do, as we have partly proovyd) notwithſtanding that the ſame Laws could never be alledgid in caſe of Succeſſion to eny great Dignite, and chiefly vnto a *Royal Dignitie, in the which the whole ſtate of the Common Wealth hath intereſt.*

And beſydes, touching the dooble Baſtardy before remembryd, though we ſhuld admitte that of the legitimacion of the Lady *K.* there wer no doubt or queſtion, yet ſuch hath ben her Life, and Behavour, and ſo much hath ſhe ſtayned her ſelf and iſſue; as ſhe is to be thought unworthy of the Crown: for ſhe was maryed (as ye know) to the Lord *Herberd:* The Mariage was perfected by all neceſſary Circumſtances, ther was conſent of the Parties, conſent of the Parentes, open ſolemnizinge, contynuance after, till lawfull Years of conſent, and in the mean time carnall Copulation, all which, ſave the laſt, are commonly knowne by dyuers that ſawe theim, and the laſt, which to all other might be moſt doubtfull, is known by the confeſſion of them both, and ſo made the more lykely to be true, bicauſe ſhe her ſelf (though in ſuch thinges that Sexe be moſt covert and ſhamefaſt) hath yet earneſtly acknowledgid the ſame: after which Conſummacion every Man knowith that albeit the Matrimony had been before for lacke of Years not vaylable, that yet thereby it commith and is made perfect, and of full force and valor. In ſorte that the Divorce and Sentence that was ſo dryven, procured and practiſed by the means of the Erle of *Penbroke* in Queen *Maryes* Reign (for reſpects then well ynough knowne) agyinſt both the Parties Wills as moſt manifeſtly appeeryd, not onely by their greate unwilligneſſe unto it then, but alſo by their affectionate and willinge manner of lyving, continent meny Years after, continuing in mutuall Love teſtified by ſondrey means, meny Tokens, Meſſingers, and other ſignes of the ſame, cannot be of eny force to breake the ſayd Matrimony, *niſi de facto.* (*m*) But during this delay, ſhe by daliance fell to carnall company with th' Erle of *Herforde*, which was not deſcryed till the bigneſſe of her Belly bewrayd her yll happ. In which what was commityd on both theire behalfes, while he th' Erle unlawfullie companyed with the Wyfe of an other Man, and ſhe the Wife of one Man, did gyve her Body to be uſed of an other Man unlawfully, ye may eaſely judge. But this done the L. *Herbert* ſeeinge himſelf thus deceyvid by his Wyfe, did (as he might lawfully) joyne himſelfe in Marying with an other Woman, and that Lyfe and Uſage betweene the Lady *K.* and the Erle beinge confirmid by dooble Iſſue, as it was utterly unlawfull before God, ſo was it founde unlawfull before ſuch Biſhoppes, and other Commiſſioners, as had the heeringe of the ſame, and their Iſſue baſtardid; wherupon doth fall out, as ye ſee, greate wickednes and laſhnes of Life in the Mother, and baſtardy in the Children. And it is not unknowne, to thoſe converſant in the Hiſtoryes, that *meny Princes ſettlid in their Kingdomes, have ben judged unworthy of their Callinge for lyving in Whoredom*; And how can ſhe be countyd worthy to come to a Kingdome, which, as her Caſe ſtandith, cannot but lyve in lyke manner? Surely, yf ſhe were the next Heire of the Bloud Royal, her Fault is much the greater ſo fowlie to have ſpottyd the ſame: For as by this Whordome ſhe hath deſervyd grevous Puniſh-

ment

(*m*) De ſponſal. cap. 30. is qui fidem.

ment, in *diſparaginge and disablinge the Bloud*; ſo hath ſhe, by vyolatinge Maryage, cut off all hope of havinge lawfull Iſſue by her to ſucceede and poſſeſſe the Crowne heerafter: For by the Law that God gyveth, (*n*) *Deut.* 23. A Baſtard, and unlawfull borne Perſon, may not beare Rule in the Church, or Common-Weale: He is counted a *Stranger*, as the Hebrewe word importith; and to the perpetuall deteſtation of Whoredome was this Lawe made, to puniſhe the Parentes Faultes juſtly in their Children. The Civil Lawe lykewyſe doth not onely puniſhe ſuch Perſonnes as make ſuch unlawfull Matches, but removith the Iſſue, ſo borne, from the Inheritance, or takinge by Legacy eny thinge of the Parentes. (*o*) And thus do yow ſee, by the way, thus much of this double Baſtardie; and what Stay, Comfort, or Conſolacion is lykely to come to this Realme of *England*, by the L. *K.* and ſuch Iſſue as ſhe now hath, or is lykely to haue heerafter, though ſhe her ſelf were by her Parentes free from Baſtardy, as by the Proces, and Allegacions before alledgid doth playnly appeere ſhe is not. Wherfore, to retourne to the Mater before in hand, and to conclude therof. Since eny Spotte, or ſuſpicion of eny, is ſufficient barre from th' Inheritance of a Crowne, much more cauſe is this playne and open Baſtardy; for *we ar all bounde in reaſon to haue alwayes more regard to the State and Dignitie of the whole Weale Publique, then of the pryvate Preferment or Commodyte of eny particuler Perſon.* And ſo doth it appeere, that by no way, neither by the Divine Lawe, nor by the Common Lawe of this Realme, nor yet by the Canon or Civill, that the Children deſcendid of the ſayd Queene and Duke, can be capable of the Crowne by their Birth.

(*n*) Deut. 23.

(*o*) Co. de inceſt. & inut. nup.

But touchinge the other Parte, they alledge in favour of the Lady *Katheryne*, Kinge *Henry* the Eight his Will, by which they ſay ſhe is lefte as Heire. Which may be as playnly and eaſely anſwerid; For it is as certeyn that Kinge *Henry* ſhuld have had no Auctoritie or Power to diſpoſe of the Crowne by Will, *yf by Parliament it had not ben gyven him.* And therfore as much as the Force and Autorytie of the Parliament dothe extend unto, ſo much might he do, and no more. And the words of the ſame Statute, though they be generall, they may not, for all that, be ſo largely taken or underſtandid, as they may be ſtretched vnto: For who will ſay, that by thoſe wordes, *there is Power or Facultie gyven to appoynt or gyve the Crowne to eny Perſon, that accordinge to the Lawe and Dignitie of this Realme, is not meete or capable of the ſame?* As vnto a *Turke*, an *Infidele*, an *infamous or opprobrious Perſon*, to a *Foole*, a *Madde-man, or generally to eny kynde of ſuch Perſon; as of the which, if ſpecial mention had ben made, it is lykely that the Parliament wold never have conſentyd or agreid thervnto: as at the makinge of the ſame Statute, yf eny had gone about to have pennyd it in this ſorte; that ſuch ſhuld ſucceede and enjoye the Crowne, as K.* Henry, *either by his Letters Patentes, or elles by his laſt Wyll, ſigned with his moſt gracious Hand, had namyd, what Parſonnes ſoever they had ben, although they were infamous, madde, impious, or ſuch other before rehearſed: it is not lykely that in this maner or forme the Parliament wolde have allowed or paſſed ſuch a Statute.* And that, that is not lykely they wold have conſentyd vnto

by wordes in ſuch ſorte ſpecially expreſſid, It is not to be thought, or underſtandid, that ſuch Perſons ſhuld be capable and fit for that Callinge, *& omni exceptione majores.* And it is playne and notoryous (as is before-ſayd) that to be borne in Adultery, or of eny other unlawfull ſorte or matche, is reputid and taken a Spotte, and that a greate one, not onely by the Lawes of Man, but alſo by the Lawes of God, (*p*) and ſo unworthy and unfitte, ar ſuch to be thought capable of the Crowne, that in all States, where they uſe to gyve or graunte eny Seigniories, Titles, or Liberties in Fee, as Baronyes, Erleſhippes, Markeſhippes, and ſuch other, the Baſtardes ar never thought worthy to be admittid *unto the Succeſſion, although that they be made legitimate.* But they muſt ſpecially be ablyd vnto the ſucceſſion of the Fee by the Prince. (*q*) And yf they cannot inherite, or be capable of their Titles and Honours, which ar not, *nor cannot be comparyd vnto a Royall Dignitie, how ſhuld they be thought worthie or capable of a Crowne?* And that, that is ſayde of Baſtardes, is to be underſtandid alſo of thoſe that pretendith the Succeſſion as Heires of Baſtardes. And ſynce this Realme *makith no leſſe eſteme of the Honour and Dignity of the ſame, then eny other Nation doth of theires, it is not lykely that ſpecially they would graunt unto the Kinge Power or Authoryte, to gyve or leve the Crowne to eny Perſon not legitimately borne, or to their Children, or to eny ſuch Perſon, upon whoſe Birth and Proceedinges there might growe ſuch ſtryfe, diſpute, or contention,* accordinge to the ſaying of *Ceſar,* and example of other a litle before remembryd. And *ſince it is not lykely that the Parliament wold haue condiſcendid ſpecially unto it, it followith, and we muſt conclude, that ſuch a Graunt cannot be comprehendid by general words.*

(*p*) Sapien. 3, & 4. Deut. 2, 3.

(*q*) Bartol. & Bald. in l. eam quam. C. de fidei com.

But though he had Power or Authority to diſpoſe of the Crowne, to the Heires of the Lady *Francys,* and the Lady *Eleanor,* it is trewe yet notwithſtandinge he could not do that, but with the Condition and Forme, that by Power of the Parliament was gyven him, that is, either by his Letters Patentes, vnder the Greate Seale of *England,* or ells by his laſt Will, ſigned with his moſt Gratious Hande.

By Letters Patentes without doubt he hath not done it, and ſo of the Will is the Controverſy. But beinge able to make a ſufficient and perfect Will, to all other intentes and purpoſes, either in puttinge to his Hand, or ells in not puttinge to his Hand; yet yf the Kinge have made his Will, without puttinge unto his Hand (as ther be Wittneſſes ſufficient, and ſome of thoſe that ſubſcribed the ſame Teſtament, in that behalf can ſo truely and plainly teſtify, that he hath, as there is no ſuch Cauſe left therfore either of ſuch doubt, or elles of ſuch conferringe, or comparinge the Prothocall with the Signe or Stampe, as thoſe that haue ſette foorthe theſe Books wold ſeeme to make; then it is playne and manifeſt that he hath not done it to this purpoſe, accordinge to the forme and maner preſcribed vnto him by the Statute. And every Acte or Deede that is done without the Forme preſcribed by Lawe, is inſufficient, (*r*) as well accordinge to th' Expoſition and Rules of the Civill Lawe, as ells by th' Expoſition and Rules of the Common Lawe of this Realme: for

(*r*) l. r. in pr. ff. de ſtipula. l. traditionibus. C. de pac. l. 1. C. de pred. cur. lib. 10.

for accordinge to the Civill Lawe it is playne, and ſo taken, though the Matters they entreate of be in favourable Cauſes; yet the lacke of Forme is no wayes borne withall or excuſed. (*s*) And much leſſe heerin, conſideringe the Forme requyrid by the Statute, is compiled with ſo meny greate, goode, important and probable Reaſons: For the Succeſſion of the Crowne beinge a Cauſe of ſuch greate weight, and in which ther was ſo greate occaſion to doubt ſo many haſſardes of indirect or ſubtile dealinge, they had goode cauſe to preſcribe ſuch a Maner and Forme to make the Will by, as wherby they had leaſt occaſion to feare or ſuſpect eny counterfetinge, confuſe, or ſiniſter behavour in the ſame. And ſo, accordinge to the Civill Lawe, in that Teſtament that they call a Solempne Teſtament, in the which there is required meny Circumſtances; yf eny of thoſe do lacke, the Teſtament, or Will, is of no force or valour. (*t*) Beſydes, accordinge to the ſame Lawe, all Statutes, or Agreements made, that takith away, or correctith eny thinge of or from the Courſe or Body of the Lawe, is reputed and taken as odious, and ought to be taken ſtrictly, even accordinge to the Letter as the worde ſtandith. And this Statute wherof we now ſpeake, is ſuch a One: For wher the Succeſſion of the Crowne ſhuld have gone whither the Common Lawe had apoynted or directid it, as vnto the next by the Statute of 35 of *Henry* the Eighth; K. *Henry* had Auctority to leve it to whome he lyſted. And therfore this Statute is to be interpretid ſtrictly and preciſely as the worde gyveth: That is, that Kinge *Henry* onely by his Letters Patentes, vnder the Great Seale of *England*, or elles by his laſt Wyll, ſigned with his moſt gratious Hand, might name whome he would to the Succeſſion of the Crowne, and not otherwyſe. And lykewiſe by the Common Lawe of this Realme, the Statute is moſt plainly a direct abridgement of the ſame, by reaſon it takith from the Common Lawe, the naturall limitation of th' Inheritance of the Crowne, and appointith it owte of the Ruſe of the Lawe, to the Order and Limitation of Kinge *Henry*; beinge in this reſpect authorized but as a private Perſon. And it is in ſome degree a Penal Lawe, for it takith the Title of a Kingedome from thoſe that by the Common Lawe have a Right, and makith, in poynt of execution, a Subject of a Prince, and contrarywyſe a Prince of a Subject; which is not onely penall, as hauinge reſpect to the loſſe of their Title to the Crowne, yf it ſhuld ſo happe, as God forbidd; but alſo it is ſo penall, that if ſuch ill Chaunce ſhuld unfortunately befall, it makith Traytors of thoſe that will clayme their Inheritance, although their intent were but to try their Titles. And it is a Learninge by the Common Lawes of *England*, that longe hath ben ſo receyvid, that in every ſuch caſe as eny of theſe happen, no Expoſition is to be allowed; but the Lawe willith us to cleve to the Letter, without eny further wreſtinge therof, then the Letter naturally and ſtrictly will reache unto. So that if it be not a ſtricte obſervation of the Letter, according to his natural entent, in any of theſe caſes the Common Lawe allowith it not. And the rather the Lawe is preciſe herin, for that it is a newe Statute, which ſeldome ar taken by equite in eny point, becauſe they ar all pennyd at large. As for Example; I will remember one or twoe, which

(*s*) L. cum hi. §. ſi pretor. ff. de tranſa. Bal. conſ. 324. volu. 2o.

(*t*) Juſtin. de teſta. & lege jube. Cibidem.

may ſuffice to ſuch as be Learnyd, to ſearch for other of lyke effect, wherof ther ar not a few. In *Anno* 1. of Kinge *Edward* the *6th*, ther was a Statute made, That if eny were condemnid for the ſtealinge of Horſes and Mares, they ſhould loſe their Clergy; and becauſe the words Horſes and Mares were the plurall nombre; it was taken not to extende to one Horſe, or to one Mare. And ſo for that cauſe a new Statute was made, *Anno* 2. of the ſame K. that made lyke Lawe for ſtealinge one Horſe, or one Mare. And the chief cauſe of this was, becauſe it is a Penall Statute, in takinge from a Man that, wherby his Lyfe might be ſavid. In K. *Richard* the *3ds* Tyme, there was a Statute made to Auctorize *Ceſt a qne uſe* to enter vpon his Feoffees, and make Feoffementes. And it was in queſtion, in *Anno* 9. of *H.* the *7th*, yf he made a Letter of Atturney, whether this were good by the Statute, and lefte therfore a doubtfull queſtion, by reaſon the Statute gyveth auctoryte onely, which muſt in all poyntes be obſerved. And ther is a greate deale more coulour to make that Feoffement goode, being by Letter of Atturney, then to make this Will to this purpoſe goode, not ſigned with the Kinges owne Hande: For if eny other put his Hande therunto, and not the Kinge himſelf, then it is ſigned with an other Hande, and not the Kinges Hande. And yf I gyve Auctorytie to my Executors to ſell my Landes, and ſay no further; then, yf they ſell the ſame by Wrytinge, or without Wrytinge, it is ſufficient; but if I adde theſe wordes, That they ſhall ſell my Landes, ſo that they do it by Wrytinge, ſigned with their proper Handes; yf now they ſell the ſame, and th' one cauſe the Reſidue, in all their preſence, to wryte all their Names, as thoughe every one had ſeverally ſubſcrybed; I hold it no queſtion, but this Sale is not good; for they muſt purſue their Auctorytie ſtrictlye, and otherwyſe it is of no effect: And conſyderinge, as is partly before remembryd, how greate a mater it was to committe ſuch a Truſt, it were a greate lacke and ſlander to the whole Parliament, to thinke that they wold condiſcend to the committinge of ſo high and weightie a Confidence, as wherof the whole Eſtate and Weale of the Realme ſhuld depend, but that they did forſee that their doinges therein ſhuld not be blynded by a Wrytinge ſigned with a Stampe, which might be put vnto, either when the Kinge was voyde of Memory, or els when he was deceaſſid; as indeed it after happenyd, as moſt manifeſtly appeeryd by open declaration made in Parliament by the late L. *Paget*, and others, that King *Henry* did not ſigne it with his owne Hande, as it is playne and probable inough by the Pardon obteynid for one *William Clerke*, for puttinge the Stampe vnto the ſayde Will after the Kinge was departid: and who doubtith but yf his meaninge had ben ſuch, ſo to haue diſpoſed of the Crowne, but that he wold have put this mater out of doubte, by ſignifyenge the ſame with his owne proper Hande.

The ſame thinge was urg'd by Lethington *the Secretary of* Scotland, *in a Letter to Sir* Will. Cecil. *Appendix to the 2d Vol. of the Hiſt. of the Ref.* F. 269.

And touchinge the two chief Examples that ar brought foorth, the one of the 21 and 33 of K. *H.* th' Eight, wherby K. *H.* was authorized to gyve his Royall Aſſent to Actes of Parliament, by his Letters Patentes, and ſo foorth: and th' other, for that Queene *Mary* omittyd the ſtyle that was apoyntid by Parliament, in 35

of

of *H.* th'Eight, in her Parliament Writts, howe little they make to the matter every Man may judge: For the Statutes of 21, and 33 of *H.* 8. were only made in affirmance of the Common Lawe, and ſuch a Royal Aſſent wold ſuffice, by Letters Patents without eny aſſurance thereof by the Signe. And this Statute was but to put ſuch matter out of queſtion; for if the Common Law had ben ſuch before, there is no doubt but that he muſt haue ſigned every Patent with his proper Hande; and ſo theſe Caſes are no way lyke. And touchinge the ſeconde, yf the Statute that conteynith the King's Style be well conſyderid, there wold be made thereof no ſuch Collection. For the ſame apoyntith a puniſhment to ſuch Subjects as of purpoſe depryve the K. of the Realm, of that Stile. But there is no doubt, but the Writts that wantyd the Stile, were in Lawe ſufficyent, and the Parties that made the ſame, puniſhable. So that theſe Examples cannot be wreſtid to ſerve eny whit for the purpoſe.

And where ther is made a great mater by reaſon the Will was inrollid in the *Chancery*, and *Conſtats* thereof made under the Broade Seale, and the Legacyes thereof in all poyntes performyd. To that may be anſwerd; That all that is therein affirmed may eaſily be confeſſed, and yet it proovith nothinge to th'intent applied; for it was his Will is ever he condeſcendid thervnto, though he did never ſigne it with his Stampe, nor with his Hande, and a goode and a perfect Will to all Entents and Purpoſes, whereof he had by Common Lawe Authoritye to make his Will of.

But it is not, or cannot be the more a perfect Will to this reſpect or purpoſe, vnleſſe he did execute the auctoritie apoyntid by the Statute of, 35 of *H.* 8. as is before remembryd. Since then the Duke had a Wyfe lyvinge, when he maryd the Frenche Queene, and by the Statute ther is nothinge to be Claymid, onles K. *Henry* had paſſed eny things either by his Letters Patentes under the Broade Seal of *Englande*, or ells by his laſt Will ſigned with his moſt gracious Hande: And that it is trewe, that he had a Wyfe lyvinge when he maryd the Frenche Queene; that ſo if it were requiſite, or hereafter may be, there mought be avouchid more then one, with much other matter touchinge that poynt of Illegitimacion and Inhabilitie, as well in thinges paſte, as alſo in thinges preſent: And that moſt certeynly there was never either eny ſuch Letters Patentes paſt under the greate Seale of *England*, nor yet eny ſuch Will ſigned with his moſt gratious Hande, as ſufficient Witneſſes yet lyvinge can well teſtify. Theiſe two maters touchinge the legitimation and validitie of the Will in that behaulf, of eny indifferent Perſon, I truſt, may be acceptid as fully and truly anſweryd.

And thus (lovinge Reader) have I vtteryd and layd before the theiſe caſes as they ar. And whome wold it not moove to commpaſſion, to behould the ſtate of theſe thinges? or whoſe Engliſh Harte wold it not grieve, even to every parte of it, to fynde any ſuch Bookes countenanced, or accompt made of ſuch Baſtardie ſlippes (as appeerith by thoſe Opinions and Bookes, ſpredde) to enherite ſo noble a Realme, our moſt deere and natural Countrey? as though it wer either ſo infortunate, ſo curs'd of God, or elſe ſo farre from

Mercy, that ſuch ſhuld be fitter for the ſame, without eny colour of eny juſt Title, to plague it with moſt infamous Diſſention, Warre, and all other Confuſion, and ſo to bring it to vtter ruyne and deſtruction; then thoſe to whome of right it ought, both by the Lawe of God and Man moſt iuſtly to belonge vnto. What is he that eſteemith or tendrith the proſperyte of the Countrie in the favour of God, or the good fame or fortune of the Worlde, that wold ſeeke to exalt vnto the Government therof ſuch *infamous and ſpottyd titles*, with which is lynked alwayes ſuch wrathe of God, and th'Effectes thereof, with ſuch continuall ſtryfe and contention; before the vnſtaynid true and perfect Inheritors apoynted by him, and by his Lawes, to ſette forth his Glory: and by whoſe Juſtice ſuch ar alwayes proſperyd and defendid: to their own honour, and the great weale and ſafety of their Subjects, as longe as they remayne in his feare, and obedyent vnto his Lawes and Ordinances. *But what might be ſayd further: If thoſe in greate face and ſhew of great zeale and iuſtice, and in greate authoritie, hath ſo much neglected their Duties, and ſo much preferryd theire owne Ambitions and corrupte Deſyres, before the Honour and Service of the Realme, as ſuch have not ſticked to further theſe ſpottyd and coulerid Titles, and alſo to encourage other to fall vnto the ſame. What a caſe is this, that ſuch ſo placyd, ſhuld go aboute to extol ſuch motions of Diſhonour and ruyne of their naturall Countrey, and yet remayne with their Callinge in ſo greate countenance of honour for their Good and faithful Service.* O England, *blame thow not the inferior ſorte ſo much, that doth but receyve theſe thinges as it is miniſtryd unto them, by whoſe credyte and perſuaſion they may be eaſily abuſd. But ſeeke thou to decifer and diſcover ſuch Abuſers, as have more regard to mainteyne theimſelfes, by whoſe overthrowe, or what wronge ſo ever it be, then to proceede direrctly to thy Service, either to the Honour of God, Author and Favorer of all Truth, or els to thy Weale, Proſperytie, and quietnes. And I exhorte the, and exhorte the agayne, not to ſuffer thy ſelf to be ledde and caryd away with eny ſuch foule iniurious Perſwaſion, either of ambitious Abuſer, or ſuch other corrupt or vnadviſed Perſon.* For ſuch foule iniurious and falſe perſuaſions ar apt to no other ende, but to ſerve Sedition, Diſcord, and Diſſention in the, and overthrow alſo all thoſe that dealith with theim. And how hard and perilous it is to obteyne a Crowne by eny injuſt or ſiniſter Title, and how much harder the things gotten, it hath ben to contynew and keepe the ſame, we may daily ſee and learne in dyvers Hiſtoryes of ſondry places by ſuch lyke Fortunes, and of the in that of K. *H.* 4. *H.* the 5. and *H.* the 6. who after they had *withholden the Crowne by* wronge, with the loſſe of meny a Manne's Lyfe, two diſcentes, wherin paſſed forty Yeres and more; at laſt were overthrowne and quite confoundid, and it reſtoryd to Kinge *Edward* the Fourth, that rightly requyrd and lawfully obteynid the ſame. Compare theſe togither, and conſider what multitude of Friends ſuch continuance in poſſeſſion was lyke to make, and of what fame and worthyneſſe the Princes were, and yet that the 3*d.* and laſt could not enioy the ſame, all that notwithſtandinge. And it may be ſuppoſd, that there is fewe ſo ſimple, ſo farre from reaſon, or ſo affectionate, but may thinke that K. *H.* the 6

was

was much more abler to defend ſo longe a contynued Poſſeſſion, then the Lady *K.* or eny comminge of the French Queene is able both to gayne the lyke, and afterwards to keep it. By which, and ſuch other Examples, we may call to mynde, that God doth not favour thoſe that doth vſurpe with eny injuſt or indirect Title agaynſt his Will and Ordinance. And what greater miſhappe, diſcomfort, or Miſery can happ to eny, then after the liftinge up to ſuch a degree, or th' attaininge of eny ſuch deſire, in a moment to loſe all, and to be caſt downe to vtter confuſion, both they and all their Freendes for ever. Conſider, for the love of God, the Honour of your Countrey, the Suretie and Quietnes of your Freendes and Neighbours, Kynſemen and deere Country-folkes! remember the Threttes pronouncyd of God againſt all Injuſtice, and call to remembrance where aboute yow goe, ye that ſtudy and endeavour your ſelfes to ſette forth theſe falſe and deceyvable Titles in the parte or favour of eny; and beholde, that inſteade of the ſhadow of your vndewe Deſire, to the greate hazard and perill of the tranquill and peaceable ſtate of your moſt deere Friendes, and natural Contrey, that yow do but procure bothe to ſuch as how wold ſeeme to favour, and alſo vnto your ſelfes, ſuch danger, grief and ſorowe, with ſuch yll and adverſe Fortune, as your moſt bitter and dedly Enemyes could no way wyſh yow greater.

And to conclude, thus much is due to th'Anſwer of the Bookes abroade, with th'advancement of the Lady *Mary* the French Queen's Iſſue, and ſettinge foorth of theſe Caſes of Baſtady, before yow: that after theſe maters thus manifeſtyd, there ſhuld inſewe of ſuch Errors the leſſe inconvenience, and that ye might thereby hereafter the better judge what were in theſe caſes the fitteſt, both for the honour of God, and the Weale, proſperyte, and quyetnes of the whole Realme. But thow, O *England*, ar, by the Grace and greate Mercy of God, vnder the Gouernment of our moſt Gracious and Prudent Queene, who hath the ſame tender and lovinge care of the Weale-Publike, that the moſt carefull and lovinge Mothers have not greater for the Weale & Saufety of theire moſt deere and beſt-belovyd Chyldren; of the which there may be daily ſeene moſt apparente and manifeſt Examples. Her maieſtie havinge governid thee, with the noble aſſiſtance of her Counſell, ſo meny Years, without manifeſt Danger, and greate perill of Civill Warre, and moſt miſerable ſlaghter (as the caſe yet ſtandith) it is not to be thought, but that the Floude of Bloode (from which God defend thee) that otherwiſe might be ſhedde, doth continually flowe before her Highnes pitifull and moſt mercifull Eyes. And that her Maieſtie taryeth but ſome goode tyde, moſt carefully to provyde for the ſame, as may be poſſible. Which it may pleaſe God to graunte vnto her Highnes, for th'Honer of Him, and the greate Benifyte of the whole Realme, with moſt convenyent ſpeede. *Amen.*

20. Martii 1565.

God ſave Queene *Elizabeth.*

REFLECTIONS

ON

Bishop Overall's

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M. DC. VI.

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Children of the Whole World.

Reflections on Biſhop Overall's *Convocation-Book*, 1606. &c.

IT having been my purpoſe to conſider all Objections of any weight in themſelves, or from the Authority of Perſons, which ſhould occur to me againſt the Right of Their *Preſent Majeſties*, and the Juſtice of their Undertaking our Deliverance; I ought not to paſs by Biſhop *Overall*'s Convocation-Book, compos'd in the time of *James* I. Licenſed by the late Biſhop of *Canterbury*, ſince his diſowning this Government, and Printed, as it is to be preſumed, with a manifeſt Intention of undermining it; for every Man may diſcern, that the Scheme of Government there drawn for the whole World, is contrary to the Foundation of our Preſent Settlement: but tho the Hypotheſis is laid together with much Subtilty, nothing but Infallibility can give it Authority; and to me it ſeems a piece of Preſumption, only ſhort of that of the *Romiſh* Church. For having made a Collection from *Sacred* and *Prophane* Hiſtory, and the *Apocryphal* Writings, (tho of the laſt they ſay, they mean not *to attribute any Canonical Authority unto them, nor to eſtabliſh any Point of Doctrine*) they Canonically condemn, of Errors, all that agree not to their Inferences and Concluſions, upon a ſtate of Fact which at leaſt may be falſe. P. 64.

This ſingle Obſervation might make it needleſs to conſider more particularly what is there ſaid, eſpecially, when I add this further, That it would make Scripture Examples under the *Jewiſh* State, to have the force of Precepts now: which if they have, then the Examples of *Jehu* in killing wicked King *Joram*, then his Subject; and of *Othniel*, and *Ehud*, who reſcued the *Iſraelites*, the one from the King of *Moab*, the other from the King of *Meſopotamia*, who had brought them under Subjection, may ſerve for Rules in the like Caſes. If they do not, then to what purpoſe do they in other Inſtances bring Preſidents of God's dealing with the *Jews*, of his chuſing and anointing their Kings, and the like? P. 46. 2 Kings. Judges.

With theſe Antidotes we may venture upon a further taſt of the Doctrines.

The Foundation of all, is the *Patriarchal* Power of *Adam*, which they ſuppoſe to have been abſolutely Monarchical all the World over; that *Noah* had the like *Authority all his Life*; but that he *divided the whole World among his Three Sons*; upon which they conclude, That if *any Man affirm, That God ever committed the Government of all the World, after* Adam's *and* Noah's *times, to any one Man to be the ſole and viſible Monarch of it, he doth greatly err.* And another Error which they Canonically condemn, is of them who hold, that *Chriſt* doth *not allow the diſtributing of this his one Univerſal Kingdom, into divers Principalities and Kingdoms, to be Ruled by ſo many Kings, and* **Abſolute** *Princes under him.* P. 84. Can. 35. Lib. 2. Can. 4. p. 147.

Upon the whole, the Fatherly Power was abſolute in *Adam*, then in *Noah*, then in his Three Sons together, and ever after in all the *Princes* in the World; and as they affirm in relation to *Adam*'s Monarchical Power, that it roſe not from any choice of the People; neither, ſay they, is it *deduced by their Conſents naturally from them*; Which is meant of the Powers which now are in the World. And yet, if I miſtake not, they elſewhere own, that the Conſent of the People may Can. 2. P. 3.

be requisite to the legitimating some Governments, when they justify
P. 67. *Mattathias*, who being moved with the Monstrous Cruelty and Tyranny of *Antiochus*, *made open* resistance; the Government of that Tyrant being not then either generally *received by Submission*, or *setled by Continuance*: wherein the Consent or Submission of the People is owned to be material. The consequence of which will reach a Prince that Exercises a Power beyond what has been *submitted* to, or *setled*.

But admit their Notion of the Absolute Power of the Father should hold, while the World was but one Family, and the Father might be supposed to be the sole Proprietor; I doubt they cannot advance one step further, without meer Fictions of their own Imaginations, or as vain and uncertain Tradition.

If we attend to the sacred Text, freed from their imposing Comment, *Noah's* Sons are by God himself made joynt Proprietors with
Gen. 9. 1, 2: him. For the Text says, *God blessed* Noah *and his Sons*, *and said unto them*, *Be fruitful and multiply*, *and replenish the earth.*

And the fear of you, and the dread of you, shall be upon every Beast of the earth, and upon every fowl of the air, upon all that moveth upon the earth, and upon all the fishes of the sea, into your hand are they delivered.

If this Donation had no effect, as to the Sons in the life-time of the Father, neither according to the Patriarchal Scheme, could the younger Sons have any Benefit in the life-time of the Elder; wherefore either here was a joynt Propriety in all, and consequently the Distribution must proceed from an expres or tacit Consent of the Proprietors; or else they must be beholden to *Jewish* Tradition, for the establishing their Christian Canon, concerning Government.

For two things, I must confess, we are obliged to them.

1. For pathetically describing the unhappiness of the *Jews*, and
P. 72. *how Religion went in those days*, *when the Priests had gotten the Reins into their own Hands.*

2. For observing, That the *Pharisees*, the most proud and stubP. 79. born of the *Jewish* Sects, were the only Men who refused to swear
Can. 30. Allegiance to *Herod* and *Cæsar*; yet they say, *If any Man shall affirm*, that *Jaddus*, the *Jewish* High Priest, having sworn Allegiance to *Darius*, might have lawfully born Arms against him, he doth greatly err.

This is in a Canon which they raise from the Fact in *Josephus*, of *Jaddus*'s refusing to assist *Alexander* in his Wars, and becoming Tributary to the *Macedonians*, as he had been to the *Persians*; and this after *Alexander* had overthrown *Darius*, who escaped by Flight. The *Jewish* High Priest seems to put words into the Mouth of our late Archbishop, returning for answer, *That he might not yield thereto*, *because he had taken an Oath of Allegiance to* Darius, *which he might not lawfully violate whilst* Darius *lived.*

Compare this with the next Canon, according to the Analogy of their Doctrine, and see how it provides for the Security of *Princes*, and Obedience to their Governments.

Can. 31. **If any Man therefore shall affirm either, That the** Jews **generally, both Priests and People, were not the Subjects of** Alexander, **after his Authority was setled amongst them, as they had been before the Subjects of** Babylon **and** Persia; **or that they were not all bound to pray for the long Life and Prosperity, both of** Alexander, **and his Empire, as they had been bound before to pray for the Life and Prosperity of the other**

other ſaid Kings and their Kingdoms, whilſt they liv'd under their Subjection; or conſequently, that they might lawfully upon any occaſion whatſoever, have offered Violence and Deſtruction, either to their Perſons, or to their Kingdoms, for the long continuance and Proſperity whereof, they were bound to pray; or that, after the Jews were delivered from their Servitude under the Kings of Syria, and the Government over them, was ſetled in Mattathias's Poſterity, it was lawful for the People upon any occaſion to have Rebelled againſt them, or to have offered Violence to their Perſons, He doth greatly err.

The Juſtice or Injuſtice of the War on either ſide, between *Darius* and *Alexander*, are made no part of the queſtion; but here are two Princes, both ſuppos'd **Abſolute**, with all *Adam*'s Power over their reſpective People, ſtaking their Kingdoms upon the chance of Battle; one of them is conquered and runs away; yet, according to our *Canoniſts*, the Conqueror is not entituled to the *Fatherly* or *Patriarchal* Power over the other's People; but it is ſuſpended, at leaſt, during the Life of the King that was beaten, and the Authority not ſetled all that while: and if the Monarchy was Hereditary, it may be yet more difficult when to fix the Settlement. If it is admitted to be *Setled* in the life-time of the ejected and conquer'd Prince, and that it is a duty *to pray for the Life and Proſperity of the* Conqueror, *and upon no occaſion to offer any Violence to his* Perſon *or* Kingdom; yet, according to theſe *Canoniſts*, they were bound, at leaſt, during the Life of the Conquered Prince, to give no active Aſſiſtance to the other, in Perſon, or Contribution. And thus it might be allowable to mock *God Almighty*, while they pray for that, to which they will not contribute the means in their Power; or elſe their Prayers were to have ſuch a mental Reſervation, as ſome have, who pray for King *James*, while they pray for [*The King*]. But if they were to pray for *Alexander*'s Proſperity without reſerve, one would think it was lawful, at leaſt, to Fight for him againſt *Darius*, notwithſtanding the Oath of Allegiance taken to *Darius*, by reaſon of the Authority which he had loſt.

If any one ſhall ſay, That this *Convocation-Book* was innocently publiſhed at this time, let him read the following *Canon*.

If any Man therefore ſhall affirm, either that the Subjects, when they ſhake off the Yoke of their Obedience to their Sovereigns, and ſet up a Form of Government among themſelves, after their own Humours, **do not therein very wickedly, or that it is lawful for any** Bordering Kings, **through** Ambition **and** Malice, **to** Invade **their Neighbours: Or that the Providence and Goodneſs of God, in uſing of Rebellions and Oppreſſions to execute his Juſtice againſt any King or Country, doth mitigate, or qualify the Offences of any ſuch** Rebels, **or** Oppreſſing Kings; **or that when any ſuch new Forms of Government, begun by Rebellion, are after** thoroughly Setled, the Authority in them is not of God: **or that any, who live within the Territories of ſuch new Governments,** are not bound to be Subject to God's Authority, **which is there executed, but may Rebel againſt the ſame: Or that the** Can. 28.

Jews, **either in** Egypt, **or** Babylon, **might lawfully for any Cause, have taken Arms against any of those Kings, or have offered any Violence to their Persons,** He doth greatly Err.

If this be taken according to any rational, or so much as probable Account of Government in General, particularly applied to the *English* Constitution; I see no danger in admitting, that People ought not to throw off the Yoke of Obedience, and set up a Form of Government *after their own Humours*; and that it is not justifiable in any *Bordering King*, or *Prince*, through *Ambition* and *Malice*, *to Invade his Neighbours*. And yet this would not in the least condemn either the People of *England*, in shaking off a former illegal and arbitary Yoak, while yet they retain the ancient Form, and Fundamental Rights of the Government; or our *Present Sovereign* in his Heroical Undertaking our *Deliverance*. But if all Princes are as Absolute as their Notion makes them, the Nation had no Ground of complaint, and His Present Majesty's Expedition would fall under the Imputation of *Ambitition*, or *Malice*; 'tis certain, that no just cause could be assign'd for it upon their Principles; and yet these would as well condemn our *Dissenting Bishops* of Disobedience to the *Late King*, in not complying with the Commands of a Prince, whom this Book would make Absolute.

And of this, the *Archbishop* would have done well to have bethought himself, when he gave his License for the *Church-Militant*, to put on this old rusty Armor, which hung up without use for above eighty years, had been full three, if not not six Years in hammering out, and was brought forth in this Critical Time, to do Wonders for their suppos'd King of *Divine Right*, of their making, at least, if not of God's. Whilest the Clergy in that, and following times, Wrote, and Preached for Preferments, and Condemn'd all Notions which lay in their way to it; it is to be feared, that they incurr'd the Curse pronounced from more Divine Authority, against him that *removes his Neighbours Land-mark*. And he that would Model the *English* Government by those of the East of old, set up and maintain'd by Confusion, would do well to transplant his Family into *Turky*, where he may find one of the truest Patterns of the fancied Patriarchal Government.

Vid. Advertisement, called *Anno* 1603. continued to 1610.

But if that, or the *Anticyræ*, to which an old *Romam* would have advised them, be too far for them to Travel in their Canonical Habit; they may take a step into *France*, where its Monarch assumes and exercises a Power according to their Primitive Stamp.

Yet the latter part of the foregoing *Canon* tells you, That you are bound to be subject to *God's Authority*, even in those *new Governments*, which are set up *after the Humours* of the People. So that fully to maintain their *Passive* Character, even in the Case of Usurpation, and Introducing a new Form, contrary to the Fundamental Constitution, they are bound to sit still, and never to Assist to Restore their *Rightful* Prince, or ancient Form of Government, but should trust Providence, or rather tempt it to forsake them, to their utter destruction.

But they who would be led by the Authority of these *Canons*, to condemn our present Settlement, I hope will learn even from thence to submit to it, and attempt nothing against it; and then I doubt not but there are brave *English* Men enough to defend it from all Foreign Force.

FINIS.

FH
MVSEVM
BRITANNICVM